
A COMPLETE
SYSTEM OF PLEADING.

VOL. III.

A COMPLETE
SYSTEM OF BLEADING.

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A COMPLETE
SYSTEM OF PLEADING:

COMPREHENDING THE MOST
APPROVED PRECEDENTS and FORMS of PRACTICE;
CHIEFLY CONSISTING OF
SUCH AS HAVE NEVER BEFORE BEEN PRINTED:

WITH AN
INDEX to the PRINCIPAL WORK,
INCORPORATING AND MAKING IT A CONTINUATION OF
TOWNSHEND's and CORNWALL's TABLES,
TO THE PRESENT TIME;

AS WELL AS AN
INDEX of REFERENCE to all the ANCIENT and
MODERN ENTRIES extant.

By JOHN WENTWORTH, Esq.
OF THE INNER TEMPLE, BARRISTER AT LAW.

*Ne quæ Studio dispôsta fideli
Intellecta priusquam sint contempta relinquant.* LUCRET.

V O L. III.
CONTAINING
ASSUMPSIT AND COVENANT.

L O N D O N:
PRINTED FOR G. G. AND J. ROBINSON, PATERNOSTER-ROW.

1797.

5



THIS Volume contains the remainder of DECLARATIONS IN ASSUMPSIT, *not reducible to any distinct Head*. The Pleas, Replications, Rejoinders, &c. in Assumpsit, and an INDEX complete to the Pleas, Replications, &c. in Assumpsit only, and part of COVENANT. The Index to the *Declarations* under every Head in *Assumpsit* is already subjoined to the Second Volume, and an Index to the Pleadings under the Head of Covenant will be given at the End of Covenant, which I was not able to accomplish in this Volume.

In the former part of the present Volume, there may appear to the critical Reader to be Precedents which could have been ranged under proper and distinct Heads, as, Assumpsit to *Repay Money*—against a *Master of a Ship*—and for *Contribution to Party-Walls*; but the Student will find the Precedents in their proper place in the Index, and the Pleader will perceive from perusing the Precedent, the anomaly which justifies classing them in the number of those *not reducible to any distinct Head*. *Ex. gr.* to repay “Insurance” Money; an “action for Contribution to Party-Walls,” is more aptly called by Lawyers an *Action on the Statute*. But although the Statute raises the duty, yet, as in the form of declaring, there is something neces-

fary to be averred, to have been done and performed by the plaintiff, namely, the building, &c. before he can call upon defendant to perform his part; I have thought proper to refer this and similar Cases to the Head of Anomalies. *Indebitatus Assumpsit* is considered to be the general Head for this sort of Action, and I have given one form in the First Volume, but I was then, and still am at a loss to define *Assumpsit General* from what Pleaders call *Special*.

AMONG the Pleas, there are four not to be found in their regular order in the body of the Work, on account of their having been communicated to me too late for a just arrangement, though at the time actually when they were drawn. I think, however, that the importance of them (each being novel in its kind), more particularly the Plea in Abatement, p. 295, from a Case now depending upon the Plea, will excuse their irregular introduction; and in the Index this irregularity is quite obviated, as they are all (except in Abatement), to be found under their proper Titles arranged. These Pleas are *Foreign Attachment*, p. 247.—*Alien and Prisoner of War*, p. 255.—*Court of Conscience Act for Westminster*, p. 258.—*By an Executor*, p. 293.

I HAD proposed to give the Errata in the Three Volumes, and the Glossary, at the end of *Assumpsit*; but examining the Second and Third Volumes strictly with that view, and observing that the Errata were comparatively few in the Second Volume to those in the First, and chiefly in the Margin and Notes only, and still fewer in the Third Volume (the Precedents themselves being very accurately printed, and requiring

ing little or no correction), I think it better to postpone both the Table of Errata and Glossary to the conclusion of the Civil Department of the Work :— Nor will it be attended with much delay, that I have determined to publish henceforward, for the accommodation and at the instance of the Profession, a Volume of the *Civil* and of the *Criminal* Division alternately ; for I have now proceeded so far in the preparation of the Civil Branch of the Work, as to be within no very distant prospect of its completion. The next Volume, which will be the Fourth Volume of the Civil Division, though the Fifth of the *Work* ; the Fourth Volume being, in fact, the First of the Criminal Division, will contain the remainder of *Covenant*, and the *Pleas in Covenant* ; and likewise the very important *HEAD* in Pleading in *DEBT*, which last I shall explain more fully in the Fifth Volume.

IN the Action of Covenant, its Analysis, though it be not capable of a distribution so varied as *Assumpsit*, it nevertheless in many respects will necessarily be very similar. The Pleas admit of still less division, for the greatest part follow their respective Declarations, with the title of the Plea at the top of the page. Thus, here the Contracts relating to Trade, Agriculture, Master and Servant, as on Policies, Articles of Agreement in Trade, between Master and *Apprentice*, Master and *Servant*, and their relation (not to instance in an infinite variety of others), are alike divisible with application to those objects, as the action upon the same sort of Contracts in *Assumpsit*. The ground of each Action is frequently the same, and the whole difference is, that in Covenant the instrument must be under seal, and accompanied with other solemnities.

J. WENTWORTH.

INNER TEMPLE, July 1797.

ing life or no-existence, I think it better to let
have done the Tables in the case of Clifton, in the
conclusion of the Civil Government of the State;
Nor will it be attended with much delay, that I
determined to publish them, and the same
motion and at the instance of the President, in
Volume of the new and the Civil Government of the
state; for I have now returned to the same
position of the Civil Government of the State, in the
within no very distant prospect of a new
the new Volume, which will be the fourth Volume of
the Civil Government, though the history of the
Fourth Volume, in the Civil Government of the State,
Division, will contain the history of the State, and
the Civil Government; and I have the same
and I have in the new Volume, which will be the
examined in the new Volume.

ASSUMPSIT SPECIAL.

CONSIDERATIONS NOT CLASSED.

APPRENTICE FEE.

LONDON, *ss.* J. W. C. complains of J. H. the elder, being, &c.: for that whereas the said plaintiff now is, and for the space of two years and more now last past hath been, a glazier, and the art or business of a glazier, for and during all the time aforesaid, hath used, exercised, followed, and carried on, and still doth use, exercise, follow, and carry on, at L. aforesaid, &c.: And whereas, (1) on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, (2) *would take and receive* one J. H. the son of the said defendant, into the service of the said plaintiff as an apprentice to learn his said art, and with him after the manner of an apprentice to serve from thenceforth and during the term of seven years then next following, he the said plaintiff the said apprentice in the same art and mystery which the said plaintiff used by the best means that he could to teach and instruct, or cause to be taught and instructed, and to find to his said apprentice meat, drink, apparel, lodging, and all other necessities, according to the custom of the city of London, during the said term, (3) he the said defendant then and there undertook, and faithfully promised the said plaintiff, to pay unto him the sum of ten pounds, as and for a premium or apprentice fee, or consideration for the same (4): *And the said plaintiff in fact saith, that he, confiding in the said promise and undertaking of the said defendant, so by him made in that behalf as aforesaid, afterwards, to wit, on, &c. at, &c. by a certain indenture of apprenticeship then and there made between the said plaintiff and the said J. H. the son, and duly executed, bearing date the same day and year, took and received the said J. H. the son of the said defendant, into his service as an apprentice to learn his art, and with him after the manner of an apprentice to serve from thence for and during the term of seven years then next following, and to teach and instruct, or cause, &c.; by reason*

Declaration in B. R. for money promised as an apprentice fee.

(1) "afterwards, to wit,"
(2) "had taken and received"
(3) "to wit, by a certain indenture of apprenticeship then and there made between the said plaintiff and J. H. the son, and duly executed, bearing date the same day and year aforesaid,"
(4) "when he the said defendant should be thereto afterwards requested:"

ASSUMPSIT SPECIAL.—NOT PAYING DRAWBACK.

reason whereof, and according to the tenor of his promise and undertaking aforesaid, the said defendant then and there became liable to pay, and ought to have paid, to the said plaintiff the said ten pounds above mentioned; of all which premises the said defendant afterwards, to wit, on, &c. there had notice. And whereas (a 2d Count the same as the first, only leaving out what is in Italic and inserting what is in the margin, and beginning at "And whereas," the same as in the seventh line of the declaration. A 3d Count for work and labour, and divers materials and other necessary things used in the business, and found and provided; *quantum meruit* accordingly; money laid out, had, and received in one Count; an account stated; common conclusion. Damage forty pounds.)

J. MORGAN.

Not paying
plaintiff the
drawback on
cyder.

KENT, *ss.* That in consideration that the said plaintiff, at the special instance and request of the said defendant, had theretofore, to wit, on, &c. at Maidstone in the said county of Kent, sold and delivered to said defendant divers, to wit, twenty-five pipes of a certain liquor called cyder, for exportation out of this kingdom, and the pipe containing the same, for a certain large sum of money, to wit, the sum of one hundred and ninety pounds fifteen shillings, therefore payable by defendant to plaintiff for the same, he the said defendant then and there undertook, and faithfully promised the said plaintiff, that he the said defendant would in a reasonable time export or cause to be exported the said twenty-five pipes of liquor called cyder, and would pay to the said plaintiff the drawback on the same (the said drawback amounting in the whole to a large sum of money, to wit, forty-five pounds), to wit, at M. in the county aforesaid: And the said plaintiff avers, that although the said defendant did export a part, to wit, eleven of the said pipes of the said liquor, and did pay the drawback on the same to the said plaintiff: Yet the said defendant did not within a reasonable time, or at any time whatsoever, export or cause to be exported, nor hath he yet exported or caused to be exported, the residue of the said twenty-five pipes of liquor called cyder, although a reasonable time hath elapsed for that purpose, nor hath he yet paid to the said plaintiff the said drawback on the said residue, amounting to a large sum of money, to wit, twenty-five pounds, or any part thereof, although to perform his aforesaid promise and undertaking the said defendant was requested by the said plaintiff afterwards, to wit, on, &c. and often both before and afterwards, at M. aforesaid, in the county aforesaid; but he so to do, &c. (Add *indebitatus assumpsit* and *quantum meruit* for goods sold and delivered; Count, three hundred pounds for money lent, laid out, &c.; and had and received; *insimul computasset* for three hundred pounds; and common conclusion to four last Counts.)

J. MORGAN.

N. B. There was another Count that the cyder was sold to one J. B. at defendant's request, but that defendant promised

ed to pay the drawback on the exportation.

LONDON.

ASSUMPSIT SPECIAL.—TO REPAY MONEY, *

3

LONDON, to wit. Thomas Hollingsworth, late of, &c. was attached to answer unto John Hurnall in a plea, &c.: for that whereas, in consideration that the said John, at the special instance and request of the said Thomas, had then and there bought of the said Thomas divers, to wit, three horses, at and for certain prices or sums of money then and there paid by him to the said Thomas for the same respectively, he the said Thomas undertook, &c. the said John, that if the said John should not like the said horses, or any or either of them, after a reasonable trial thereof he should be at liberty to return the same, and should have the price thereof repaid to him by the said Thomas, upon allowing to the said Thomas one guinea for each and every horse so returned: And the said John in fact saith, that after the sale of the said horses unto him the said John, to wit, on, &c. he the said John proceeded to try, and had then and there a reasonable trial of the same, but upon such trial did then and there dislike one of the said three horses, to wit, a horse for which he the said John, upon the aforesaid sale thereof unto him the said John by the said Thomas, paid to the said Thomas a certain large price, to wit, the price of eight pounds eight shillings of lawful money of Great Britain: and thereupon, and because of such dislike to the said horse, he the said John did afterwards, and in a reasonable space of time, to wit, on, &c. return the said horse to the said Thomas, who then and there took the said price, and accepted of and received the same of and from the said John, under and according to the terms of the aforesaid sale thereof; and although the said John then and there requested the said Thomas to repay unto him the said John the aforesaid price of the said horse, except one guinea, which the said John was then and there ready and willing to allow unto him the said Thomas, according to the terms of the aforesaid sale: Yet the said Thomas, not, &c. but, &c. the said John in this behalf, did not then and there repay, nor hath he as yet repaid, unto the said John the said price so by him paid for the said horse so returned as aforesaid, after deducting thereout such allowance of one guinea unto him the said Thomas as aforesaid; but he so to do then and there, and always from thence hitherto, hath wholly refused, and still doth refuse, to wit, at, &c. (Add nine Counts more: 1st and 2d, for the use and occupation of a stable; 3d and 4th, for cattle, goods sold and delivered; 5th and 6th, for work and labour by himself and his servants; 7th, money laid out, lent, and advanced; 8th, money had and received; 9th, account stated; and common conclusion to the nine last Counts.)

Declaration, plaintiff bought three horses of defendant, who promised, upon their not being liked upon a reasonable trial, to take them back, and repay plaintiff the money he gave for them, deducting one guinea therefrom; plaintiff returned one horse, and defendant refused to repay.

V. LAWES.

LONDON, to wit. John Hedley complains of Philip Skinner, being, &c.: for that whereas the said Philip, before the making being indebted to plaintiff in 200l. settled accounts, and agreed to give his note for 100l. and, defendant being possessed of a ship, another 100l. was to remain on the ship, and plaintiff was to run the risk, and the money to continue as lent on bottomree, and defendant to allow plaintiff 15l. per cent. for that 100l. and to repay all money paid by plaintiff in insurance.

* And respecting Money lent on Bottomree.

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ASSUMPSIT SPECIAL.—RESPECTING MONEY

ing the agreement hereafter next mentioned, to wit, on the fifteenth day of February A. D. 1753, at London aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap, accounted together with the said John of and concerning divers sums of money before then due and owing from the said Philip to the said John, on account of divers dealings, tradings, and transactions which had been before then had and carried on between them in the coal trade, and then being in arrear and unpaid; and that upon account, the said Philip was then and there found in arrear to the said John in the sum of two hundred and ninety pounds: And whereas the said Philip, at the time of the taking and settling of the said account, and also at the time of the making the agreement hereafter mentioned, and from thence for a long time, to wit, hitherto, hath been possessed of a certain ship or vessel called the Rebecca, or of some great part thereof, as of his own property; and being so found in arrear, and which said ship was then and there, during all, or the greatest part, of the time aforesaid, hath been employed in trade; and being so possessed of the said ship, or of such part thereof, and such property of the said Philip in the said ship being then, and during all the time aforesaid, of the full value of two hundred pounds and more, || it was thereupon, on the same fifteenth day of February in the year aforesaid, at London aforesaid, in, &c. agreed by and between the said John and the said Philip, that the said Philip, for securing the payment of the money so due and in arrear, should then and there make and subscribe with his own hand, and deliver to the said John, a certain promissory note for the said sum of two hundred and ninety pounds, payable to the said John or his order, on demand, for value received, in cash, coals, keel dues, and custom-house charges at Newcastle; and that the said Philip should, from the time of the making of such note, pay to the said John interest, after the rate of five pounds by the hundred, for one year, for the sum of one hundred pounds, part of the said two hundred and ninety pounds, until the same one hundred pounds should be paid to the said John by the said Philip; and that the said John should, from time to time, cause insurance to be made for one hundred pounds, on the said Philip's interest in the said ship called the Rebecca, at the expence of the said Philip, until the said one hundred pounds, parcel of the said two hundred and ninety pounds, should be paid by the said Philip to the said John; and that the said Philip should accordingly repay to the said John what monies the said John should expend in and about such insurance; and that the said John, with respect to one hundred pounds, other part of the said two hundred and ninety pounds, should venture the same during the pleasure of the said John and Philip, on the bottom of the said ship as on the bottomree in the usual and ordinary method of lending money upon ships on bottomree, as if the said John had lent the same to the said Philip on bottomree, on the bottom of the said ship; and that the said Philip should, during such time as that one hundred pounds should so remain on bottomree as aforesaid, pay to the said John, for his risque, interest, and profit thereof, at and after the rate of fifteen pounds by for the one hundred pounds by the year,

LENT ON BOTTOMREE, AND FOR INSURANCE.

year, in respect thereof, the said John running the usual risques and perils of persons lending money on bottomree in respect thereof: and the said agreement being so made, be the said John afterwards, to wit, on the same day and year aforesaid, at L. aforesaid, in, &c. at the special instance and request of the said Philip, undertook, and then and there faithfully promised the said plaintiff, to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled; and in consideration thereof, be the said Philip undertook, and faithfully promised the said John, to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled: And the said John avers, that he the said Philip did then and there, to wit, on the same day and year aforesaid, at London aforesaid, in pursuance of the said agreement, make his certain note in writing called a promissory note, subscribed with his own proper hand, bearing date the same fifteenth day of February in the year aforesaid, and did then and there deliver the same to the said John, and did thereby promise to pay to the said John, or his order, upon demand, the said sum of two hundred and ninety pounds as for value received in calh, coals, keel duties, and custom-house charges at Newcastle; and that the said John, according to, "in pursuance" of the said agreement from time to time since the making of the said agreement, hitherto hath caused insurance to be made on the said Philip's interest in the said ship called the Rebecca, and in so doing hath paid and expended for the said Philip divers sums of money, in the whole amounting to a large sum, to wit, to forty pounds, to wit, at London aforesaid, in, &c. aforesaid; and that the said John, to wit, on the said fifteenth day of February A. D. 1753 aforesaid, to wit, at London aforesaid, in, &c. did venture, and from thence hitherto hath ventured, the said one hundred pounds, other parcel of the said two hundred and ninety pounds, on the bottom of the said ship as on bottomree in the usual and ordinary method of lending money upon ships on bottomree, and as if the said John had lent the same to the said Philip on bottomree, on the bottom of the said ship, and during all the time aforesaid hath run all the usual risques and perils of persons lending money on bottomree in respect thereof of the said one hundred pounds; and that neither of the said sums of one hundred pounds and one hundred pounds, or any part of either of them, have or hath been yet paid by the said Philip to the said John; and that the said ship still remains and continues in good safety, and all the voyages that have been begun by the said ship are now ended; of all which said several premises the said Philip afterwards, to wit, on the twenty-seventh day of January A. D. 1755, at London aforesaid, in, &c. had notice: Yet the said Philip, not regarding his aforesaid promise and undertaking, but contriving and fraudulently intending to deceive and defraud the said John in this behalf, hath not yet paid to the said John the said one hundred pounds last-mentioned two several sums of one hundred pounds and one hundred pounds at and after the rate of five pounds for the forbearing of one hundred

ASSUMPSIT SPECIAL.—PARTY WALLS.

pounds for one year, or any part thereof, nor the said sum of money so laid out and paid by the said John for making the said insurance, or any part thereof, nor the said fifteen pounds by the hundred so continued on bottomree as aforesaid, or any part thereof, although so to do he the said Philip was requested by the said J. afterwards, to wit, on the same day and year last aforesaid, at London aforesaid in the parish and ward aforesaid; but hath hitherto wholly refused, and still refuses. (2d Count, after mentioning defendant's mode of being in arrear, &c. :) And whereas said Philip, at the time of the taking and settling of the said last account, and also at the time of the making the agreement hereafter next mentioned, was, and from thence for a long time, to wit, hitherto, hath been, possessed of a certain part or share of a certain ship or vessel called the Rebecca, then, and during all and most part of the time aforesaid, employed in trade; and the said P. being so possessed of such his interest in the said ship, being, during all the time aforesaid, of the value of one hundred pounds and more; and the said P. being so found in arrear to the said J. in the said sum of one hundred and ninety pounds, it was, on the same day and year, &c. agreed, &c. (as before, to this mark ||, then, omitting what is in *Italic*, add), and that as to one hundred pounds, parcel of the said two hundred and ninety pounds, he the said John should venture, &c. (as before, omitting all that is in *Italic*, except the first that follows; Count upon the note; money lent, laid out, &c.; *insimul computasset, &c.*

Special Counts were drawn by Mr. Warren.

Declaration against defendant for not paying plaintiff half the expence of the party wall between their houses.

MIDDLESEX, to wit. S. P. complains of P. M. being, &c. : for that whereas the said S. before and on, &c. to wit, at, &c. was, and from thence hitherto hath been, and still is, seised in his demesne as of fee of and in a certain messuage or dwelling-house, with the appurtenances, there situate, and being of a certain rate or class of building, and also of and in a certain wall called a party-wall, of and belonging, and part or parcel of the said messuage or tenement; and the said Samuel being so seised, as aforesaid, afterwards, and whilst he was so seised, to wit, on, &c. to wit, at, &c. in consideration that the said Samuel, at the special instance and request of the said Patrick, would permit and suffer the said Patrick to make use of (1) *the said party-wall* of the said Samuel, to wit, by cutting into and putting, laying, placing, and fixing the ends of divers beams, rafters, and other timbers of and belonging to a certain messuage or dwelling-house of a certain rate or class of building, to wit, the same rate or class of building as the said messuage or dwelling-house of the said Samuel, that is to say, of the third rate or class of building, which he the said Patrick was then and there about to build, and building contiguous and next adjoining to the said messuage or dwelling-house of the said Samuel, that is to say, on the (2) *north* side thereof, at the parish aforesaid, in and upon the said party-wall of the

(1) "a part, that is to say, two thirdparts of the said party-wall,"

(2) "south"

the said S. and by keeping and continuing the same so therein, and thereon put, laid, placed, and fixed, and by building such house adjoining to, and making use of the said party-wall *the whole length thereof* (1), as the party-wall between the said two buildings, and as the only party-wall between them, he the said P. undertook, and then and there faithfully promised the said S. to pay him a part, to wit, one moiety of the expence of building the said (2) party-wall of him the said Samuel, when he the said Patrick should be thereto requested: And the said Samuel in fact saith, that he, confiding in the said promise and undertaking of the said Patrick, so by him made in this behalf as aforesaid, did, after the making thereof, to wit, on, &c. suffer and permit the said Patrick to make use of, and the said Patrick did then and there, to wit, on, &c. at, &c. by virtue of such permission, make use of (3) the said wall of him the said Samuel, to wit, by then and there cutting into and putting, laying, placing, and fixing the ends of the aforesaid beams, rafters, and other timbers in and upon the said party-wall of him the said Samuel, and by keeping and continuing the same so therein and thereon put, laid, placed, and fixed, and by building such house by him the said Patrick as aforesaid, adjoining to and making use of the said party-wall (4) *the whole length thereof*, as a party-wall between the said two buildings, and as the only party-wall between them; by means of which several premises, and according to the tenor of the said promise and undertaking of the said Patrick so by him made as aforesaid, he the said Patrick afterwards, to wit, on, &c. to wit, at, &c. became liable to pay to the said Samuel a part, to wit, one moiety of the expence of building the said (5) party-wall of him the said Samuel, and made use of by him the said Patrick as aforesaid: And the said Samuel in fact saith, that the same then and there, to wit, on, &c. at, &c. amounted to a large sum of money, to wit, the sum of (6) *twelve pounds twelve shillings*; whereof the said plaintiff then and there had notice: And whereas, &c. &c. (this Count like the last, only omitting what is underlined, and inserting what is wrote in margin.) And whereas the said Patrick afterwards, to wit, on, &c. at, &c. was indebted to the said Samuel in the sum of twenty pounds of lawful, &c. for the use and occupation of divers, to wit, two party-walls of him the said Samuel, situate and standing in the parish of, &c. by him the said Samuel, and at his request, and by the permission of the said Samuel, for a long time, to wit, for the space of four years then elapsed, had used, possessed, and enjoyed; and being so indebted, he the said Patrick, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. &c. And whereas, &c. &c. (quantum meruit; money laid out, &c. &c.; lent, &c. &c.; account stated; and common conclusion.)

(1) "of him the said Samuel in part, to wit, two third parts thereof,"

(2) "part, to wit, the said two third parts of the said"

(3) "a part, that is to say, two third parts of"

(4) "of the said Samuel in two third parts thereof,"

(5) "part, that is to say, the said two third parts of the said last-mentioned"

(6) "6l. 3s. 6d."

3d Count.

4th Count.

V. LAWES.

Declaration,
 plaintiff was pos-
 sessed of a boat,
 which he let out
 to hire to defen-
 dant to bring
 some mahogany,
 which was on
 board a ship, a-
 shore; defend-
 ant told the plain-
 tiff that the said
 mahogany could
 be legally
 brought ashore;
 but defendant
 not having pro-
 cured the certi-
 ficate for its be-
 ing landed, the
 mahogany and
 boat were seiz-
 ed, &c.

PALACE COURT, to wit. Peter Dawl, by R. F. his at-
 torney, complains of Jos. Seddon, of a plea of trespass on the case,
 &c.: for that whereas heretofore, to wit, on, &c. to wit, at, &c.
 and within the jurisdiction of this court, in consideration that the
 said Peter, at the special instance and request of the said J. had
 then and there let to hire to him the said J. a certain boat of him
 the said Peter, he the said J. undertook, and then and there faith-
 fully promised the said Peter, to use, and that the said boat, whilst
 under such letting to hire thereof as aforesaid, should be used, in a
 fair, reasonable, and lawful manner: And the said Peter in fact
 saith, that although the said boat of him the said Peter was used
 and employed by the said J. under such letting thereof to hire as
 aforesaid: Yet the said J. not regarding his said promise and un-
 dertaking so by him made as aforesaid, but contriving and frau-
 dulently intending craftily and subtilly to deceive and defraud the
 said Peter in this behalf, did not then and there use the said boat
 of him the said Peter, nor was the same then and there used in a
 fair, reasonable, and lawful manner; but on the contrary thereof,
 he the said Peter further says, that whilst the said boat of him the
 said Peter was so let to hire to the said J. as aforesaid, he
 the said J. did use, and caused the said boat to be used, in
 an unfair, unreasonable, and unlawful manner, to wit, by then and
 there, that is to say, on, &c. at, &c. in the county and jurisdic-
 tion aforesaid, putting on board, and causing to be put on board,
 the same, from and out of a certain ship or vessel then lying and
 being in the river of Thames, and within the jurisdiction of this
 court, to be carried ashore and laid on land, divers pieces of ma-
 hogany, which had been before then imported into this kingdom
 without the proper and lawful certificate or authority for the so
 unshipping and carrying on shore the said mahogany, commonly
 called a sufferance, or certificate of sufferage, accompanying the
 same (and without he the said Peter then and there knowing that
 the said mahogany was not accompanied with such certificate or
 authority); whereby, and by means whereof, the said boat of the
 said Peter, together with its oars, being in the whole of a large
 value, to wit, of the value of nine pounds of lawful money of
 Great Britain, became and were liable to forfeiture and seizure,
 and were in consequence thereof afterwards, and whilst they were
 so employed in carrying of the said mahogany as aforesaid, to wit,
 on, &c. at, &c. in, &c. in due manner seized, taken, and
 carried away from the said Peter, as forfeited for the cause afore-
 said, whereby the said Peter hath not only ever since the said sei-
 zure lost the use of his said boat and oars, and all profit, benefit, and
 advantage that would have arisen and accrued to him from the same,
 and from the use thereof in his business of a waterman, but hath also
 been put to great trouble, inconvenience, and expence in a fruitless
 endeavour to recover the said boat and oars; and the said boat and
 oars, in consequence and by reason of their being so used and seized
 as aforesaid, became and were, and are wholly and entirely lost
 unto the said Peter, to wit, at, &c. in, &c. And whereas
 also

also heretofore, to wit, on, &c. in, &c. in consideration that the said Peter, at the special instance and request of the said J. would in and by a certain other boat of him the said Peter carry on shore, from a certain other ship or vessel then lying and being in the river Thames aforesaid, and within the jurisdiction aforesaid, certain other pieces of mahogany, he the said J. undertook, and then and there faithfully promised the said Peter, that the said last-mentioned mahogany might be then lawfully carried ashore from the said last-mentioned ship or vessel in and by the said last-mentioned boat of the said Peter: And the said Peter in fact further saith, that he, confiding in the said last-mentioned promise and undertaking of the said J. and not knowing but that the said last-mentioned mahogany might be safely carried ashore in and by the said last-mentioned boat of the said Peter, after the making of the said last-mentioned promise and undertaking of the said J. to wit, on, &c. at, &c. in, &c. had and received the said last-mentioned mahogany into his said last-mentioned boat, for the purpose of carrying the same on shore, and at the time of the seizure thereof, as hereafter mentioned, was proceeding and about so to do: Yet the said Peter in fact further saith, that the said J. did not regard his said last-mentioned promise and undertaking, but did thereby then and there craftily and subtilly deceive and injure him the said Peter in this, that the said last-mentioned mahogany so put on board of the said last-mentioned boat of him the said Peter as aforesaid, for the purpose aforesaid, might not, at the time of the making of the said last-mentioned promise and undertaking of the said J. and at the time of the said last-mentioned mahogany being so put in and on board the said last-mentioned boat of the said Peter for the purpose aforesaid, be lawfully carried on shore in and by the said last-mentioned boat, but it was then and there unlawful to carry the same on shore in and by the said boat, by reason that the said last-mentioned mahogany was not then and there accompanied with the proper and lawful certificate or authority for so carrying the same on shore, commonly called a sufferance or certificate of sufferage; whereby, and by means whereof, the said last-mentioned boat of the said Peter, together with its oars, being in the whole of a large value, to wit, of the value of nine pounds of like lawful money of Great Britain, became and were liable to forfeiture and seizure, and were in consequence afterwards, and whilst they were so employed in the carrying of the said last-mentioned mahogany as aforesaid, to wit, on, &c. at, &c. in, &c. duly seized, taken, and carried away from the said Peter as forfeited for the cause aforesaid; whereby the said Peter hath not only ever since lost, &c. &c. (as in first Count.) And whereas heretofore, to wit, on, &c. at, &c. in, &c. in consideration that the said Peter, at the like special instance and request of the said J. and without then and there knowing but that the mahogany hereafter next mentioned might be lawfully carried on shore as hereafter mentioned, had then and there suffered and permitted the said J. to load and put in and on board a certain other

3d Count.

ASSUMPSIT SPECIAL.—DECEIT, MISFEASANCE, &c.

other boat of him the said Peter, from and out of a certain other ship or vessel then lying and being in the river Thames aforesaid, within the jurisdiction aforesaid, certain other pieces of mahogany, to be carried on shore in and by the said last-mentioned boat of him the said Peter, he the said J. undertook, &c. that the said last-mentioned mahogany might be then lawfully carried on shore from the said last-mentioned ship or vessel in and by the said last-mentioned boat of the said Peter: Yet the said Peter in fact further saith, that the said J. did not regard his said last-mentioned promise and undertaking, but did thereby then and there craftily and subtilly deceive and injure him the said Peter in this, to wit, that the said last-mentioned mahogany so put on board the said last-mentioned boat of him the said Peter for the purpose aforesaid, might not, at the time of the same so being put on board the said last-mentioned boat as aforesaid, for the purpose aforesaid, or at the time of making the said last-mentioned promise and undertaking of the said J. be lawfully carried on shore in and by the said last-mentioned boat of him the said Peter, but it was then and there unlawful to carry the same on shore in and by the said last-mentioned boat, and the same would not be then and there carried on shore in or by such boat without subjecting the said last-mentioned boat, together with its oars, to forfeiture and seizure; whereby, and in consequence whereof, the said last-mentioned boat and oars, being in the whole of a large value, to wit, of the value of nine pounds of like lawful money, afterwards, and whilst they were employed in carrying the said last-mentioned mahogany on shore from the said last-mentioned ship or vessel, to wit, on, &c. at, &c. in, &c. in due manner seized, taken, and carried away from the said Peter as forfeited, whereby the said Peter hath not only, ever since the said last-mentioned seizure, lost the use, &c. &c. (as before.) And whereas heretofore, to wit, on, &c. at, &c. in, &c. in consideration that the said J. had before then unlawfully attempted to bring on shore, in and by a certain other boat of the said Peter, from a certain other ship or vessel then lying in the river Thames aforesaid, and within the jurisdiction aforesaid, certain other pieces of mahogany; and also in consideration that the said last-mentioned boat of the said Peter, together with its oars, had in consequence of, and during such attempt to bring on shore such mahogany as last aforesaid, become forfeited, and been in due manner seized, taken, and carried away from him the said Peter as forfeited, he the said J. undertook, &c. to pay him the value of his said last-mentioned boat and oars when he should be thereto afterwards requested: And the said Peter in fact saith, that the said last-mentioned boat and oars of him the said Peter were, at the time of the aforesaid seizure and forfeiture thereof, of a large value, to wit, of the value of other nine pounds of like lawful money; whereof the said J. afterwards, to wit, on, &c. at, &c. in, &c. had notice; and although the said last-mentioned boat and oars have not been as yet restored to the said Peter, but are still wholly lost to him: Yet the said John, not regard-

4th Count.

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ASSUMPSIT,—EXPENCES OF DEFENDING JOINT ACTIONS. 13

ing his said last-mentioned promise and undertaking so by him made as aforesaid, but contriving, &c. the said Peter in this behalf, hath not as yet paid him the value of the said last-mentioned boat and oars, or any part thereof, nor as yet made him any compensation for the same, or for the aforesaid loss thereof, although so to do he the said J. was requested by the said Peter afterwards, to wit, on, &c. at, &c. in, &c.; but he so to do hath hitherto wholly refused, and still refuses. And whereas, &c. &c. (for work and labour by himself and servants.) And whereas, &c. &c. (Money laid out, expended, and paid; an account stated; and common conclusion to palace court declaration. Damages nine pounds.)

5th Count,

6th Count.

V. LAWES,

LANCASHIRE, *ff.* W. W. complains of D. W. being, Declaration
&c.: for that whereas, before and at the time of the making of
the agreement hereafter mentioned, a certain action or suit for not fulfilling
at law had been and was commenced by E. M. and E. M. against his agreement
the said plaintiff in the court of our lord the king, before the king with respect to
himself here, for and in respect of the erecting, placing, and con- the paying his
tinuing of certain vault stones and other materials in and across a share of the ex-
certain drain or watercourse at the parish of, &c. in the said county of pences of a cer-
L, a certain part thereof being near to certain land of the said E. M. tain action
and E. M.; also for and in respect of the removal of a certain other which had been
bank, and of certain other earth and stones on the north side of brought by one
the said drain or watercourse, and near to the said land of the A. B. against the
said E. M. and E. M. and thereby diverting the water of the said plaintiff, and
drain or watercourse out of its usual course and channel, unto and which the defen-
upon the said land of the said E. M. and E. M. and which said dant, with sever-
drain or watercourse had been so diverted, under an idea of al other persons,
right so to do, and to enable the making of a certain other drain agreed should be
or watercourse there for the benefit and protection of certain defended, and
lands there called Langton Marsh; and the said action or suit was, the expences
at the time of making the agreement hereafter next mentioned, paid in propor-
depending and undetermined; and being so depending, and in con- tion to their
sideration that the said plaintiff had, in diverting of the said drain shares in a
or watercourse as aforesaid, acted as a servant or labourer merely, marsh.
without any interest in the said marsh called Langton Marsh, it
was heretofore, to wit, on, &c. agreed by and between the said
plaintiff and defendant, and the several other persons following,
that is to say, A. B. C. D. &c. &c. (1) who, together with the (1) "as such"
said defendant, were then and there respectively owners and pro-
prietors of certain cattle gates and rights of pasturage in and upon
the aforesaid marsh, in manner and to the effect following, that is
to say, that the said action or suit should be defended, and they
the said defendant and the several other persons parties to the
said agreement, did then and there respectively covenant, promise,
and agree, that they and each and every of them should and would
pay, and cause to be paid, in proportion to their share or shares in
the

- (1) "on the *the* *aforsaid* *marsh* (1) unto the said plaintiff, the several sums of money that should or might be charged on the said plaintiff in defending the said action; and the said agreement being so made, he the said defendant afterwards, to wit, on, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there undertaken, and faithfully promised the said defendant, that he the said plaintiff would perform and fulfil the said agreement on his part, undertook, and then and there faithfully promised the said William, that he the said defendant would perform the said agreement on his part: And the said plaintiff in fact further saith, that he, confiding in the said agreement, promise, and undertaking of the said defendant, did, after the making thereof, go on with the defence of, and did duly, regularly, and to the best of his knowledge and ability, defend the said action or suit so commenced against him, *upon the right or ground hereinbefore alluded to, until afterwards, to wit, in Easter term in the year 1703 aforsaid, when the same was finally ended* and determined in favour of the said E. M. and E. M. who (2) *in that same term recovered against him the said William in the same court here, in the said action or suit, a certain large sum of money, to wit, the sum of eighty pounds of lawful, &c. for damages and costs in the said suit; which said sum of money he the said William was afterwards, and before the exhibiting of the bill of the said plaintiff, forced and obliged to, and did in fact pay, satisfy, and discharge, to wit, at, &c.: And the said plaintiff in fact further saith, that by reason and in consequence of his defending the said action or suit and in and about the same, he the said William was also charged with, and necessarily forced and obliged to, and did in fact pay, lay out, and expend divers other sums of money, amounting in the whole to a large sum of money, to wit, the sum of one hundred and eighty one pounds over and above the said money so recovered against him as aforsaid, to wit, at, &c.; and that the proportion or share of the said defendant of the said money so charged upon and paid by him the said plaintiff as aforsaid, in respect of his share on the said marsh called Langton Marsh, at the time of the making of the aforsaid agreement, amounted to a large sum of money, to wit, the sum of nine pounds; whereof the said defendant afterwards, and before the exhibiting of the bill of the said plaintiff, to wit, on, &c. had notice; and thereby, and by reason of the several premises aforsaid, and his aforsaid agreement and promise, he the said defendant became liable to pay, and ought to have paid, to the said William the said sum of nine pounds, to wit, at, &c. And whereas, before the making of the agreement hereafter next mentioned, the said plaintiff was employed to cut, and in consequence thereof, and under an idea of a right so to do, aided and assisted in the cutting, of a certain boundary ditch adjoining on the south to the said marsh, and on the north, &c. for the benefit and protection of the said marsh called Langton Marsh; and in consequence of digging the said ditch, and what was done on that occasion, a certain other*
action

action or suit at law was commenced and brought by the said E. M. and E. M. against the said William in the court of our said lord the king before the king himself here; and the said David and the several other persons hereafter named, being then and there respectively owners and proprietors of certain cattle gates, &c. in and upon the said marsh called, &c. were, as such owners and proprietors, interested in the determination of the said last-mentioned action or suit in favour of the said plaintiff, and were desirous that the same should be defended: and thereupon afterwards, and whilst the said last-mentioned action or suit was depending, to wit, on, &c. it was agreed by and between the said plaintiff and defendant, &c. &c. &c. (Go on with this Count same as the first, omitting what is in *Italic*, and inserting in lieu thereof what is in the margin.) And whereas the said plaintiff, ^{3d Count.} before the making of the promise and undertaking hereafter next mentioned, was employed and concerned in the digging of a certain other boundary ditch for the protection and benefit of the said marsh hereinbefore mentioned, called Langton Marsh, in which the said David was then and there interested, and in the damming up and diverting the water of a certain other drain or water-course at, &c. during the digging of said last-mentioned ditch, and to enable the digging of the same; and in consequence thereof, a certain other action or suit at law had been and was commenced by the said E. M. and E. M. against him the said William in the court of our lord the king here, and the said David was, as such owner and proprietor on the said marsh called, &c. as aforesaid, interested in the said last-mentioned action or suit being determined in the favour of the said William, and was desirous of the same being defended, but the said William was unwilling so to do without being indemnified as to the costs and consequences of such defence; and divers of the owners and proprietors of cattle gates on the said marsh were willing to come into such contribution or subscription: and thereupon afterwards, and whilst the said last-mentioned action or suit was depending, and whilst the said William was so interested in the event thereof as aforesaid, to wit, on, &c. in consideration of the several premises aforesaid, and also in consideration that said William, at the special instance and request of the said David, would go on with the defence of, and defend, the said last-mentioned action or suit, he the said David undertook, and then and there faithfully promised the said William, to pay unto him all such sums of money as should be charged upon him the said William by or in consequence of his so defending the said last-mentioned action or suit, in proportion to his share and interest on the said marsh called, &c.: And the said William in fact further saith, &c. &c. (as before. Add the common Counts; an account stated; and conclude.) Yet the said David, not, &c. but, &c. the said William in this behalf, hath not paid the said several sums of, &c. in the three first Counts mentioned, nor the several sums in the three last Counts mentioned, or any or either of them, or any part thereof, although so to do, &c. &c.

V. LAWES.
LONDON,

ASSUMPSIT SPECIAL.—NEGLIGENCE.

(a) Declaration against the principal coal-meters of London, for not sending the deputy coal-meters on board ships which were arrived in the port of L. with coals, by which they were detained for a long time.

LONDON, *J.* John Read complains of John Moore, esquire, Joseph Skinner, &c. being, &c.: for that whereas they the said defendants, before and at the several and respective times of the committing of the several grievances hereafter mentioned, were the principal sea-coal-meters for and within the port of London, duly appointed to superintend the unloading and admeasurement of coals from time to time brought and imported into the said port of London, and for that purpose to, from time to time, appoint a sufficient number of deputy or under meters, to be from time to time, as occasion should require, sent on board the several ships or vessels from time to time bringing and importing such coals into the said port, to superintend the unloading of such ships or vessels, and to duly measure the coals so thereby imported and brought into the said port of London, and certain of such deputy or under meters had been and were, before the committing of the several grievances hereafter mentioned, in due manner constituted and appointed for such purposes as aforesaid, to wit, at, &c.: And whereas the said John Read, before and at the several and respective times of the committing of the several grievances hereafter mentioned, was a coal-factor, and as such factor, he the said J. R. before the committing of the grievance hereafter next mentioned, to wit, on, &c. imported into the said port of London certain cargoes or quantity of coals of him the said J. R. in and by certain ships or vessels, that is to say, a certain cargo or quantity of coals in and by a certain ship or vessel called the Ocean, whereof one William Gray was master, a certain other cargo or quantity of coals in and by a certain other ship or vessel called the Effect, whereof one William Taylor was master, and a certain other cargo or quantity of coals in and by a certain other ship or vessel called the Peggy, whereof one George Venus was master; and having so imported such several cargoes or quantities of coals as aforesaid, and also having duly answered and paid the duties due and payable to his majesty on such importation thereof as aforesaid, and being about to unload and deliver the said several ships or vessels of their said respective cargoes, he the said J. R. after such importation of the said coals as aforesaid, and after the duties thereon had been so answered and paid as aforesaid, and whilst the said several ships or vessels were respectively lying and being in the said port of London in the river Thames there, with their said several cargoes of coals in and on board the same as aforesaid, to wit, on, &c. gave notice to the said defendants of the arrival of the said several ships or vessels in the said port of London, and of the importation of the said several cargoes of coals as aforesaid, and of the duties then having been answered and paid as aforesaid, and then and there required them the said defendants, as such principal sea-coal-meters for and within the said port of L. as aforesaid, to forthwith send on board such several ships or vessels as aforesaid such deputy or under coal meters as

(a) This declaration is in Tort. See Index.

afore-

aforesaid, in order to superintend the unloading of the several cargoes of coals of him the said John Read from and out of the said several ships or vessels, and, as such deputy or under meters, to duly measure the same; and although it was then and there the duty of the said defendants, as such principal sea-coal-meters as aforesaid, to accordingly send such deputy or under coal-meters on board the said several ships or vessels for the purpose as aforesaid; and although they the said defendants could and might have so done, to wit, at, &c.: Yet the said defendants, not regarding their duty as such principal sea-coal-meters for and within the said port of London as aforesaid, but neglecting the same, and contriving and intending to injure the said J. R. in this behalf, and to retard and hinder the unloading and delivery of his said several cargoes or quantities of coals to being in and on board such several ships or vessels as aforesaid, did not forthwith send such deputy or under coal-meters as aforesaid on board the said several ships or vessels, or any or either of them, but neglected and omitted so to do for a long space of time from the time of their being so required to be sent on board such ships or vessels as aforesaid, to wit, until the twenty-eighth day of the said month of December, in the year aforesaid, with respect to the said ships or vessels called the *Effect* and the *Peggy*, to wit, at, &c. whereby he the said J. R. was, for and during these respective times and periods, hindered and prevented from unloading the said several cargoes of coals of him the said J. R. from and out of the said several ships or vessels, and in consequence thereof the said several ships or vessels were, during those times and periods, unavoidably kept and detained in the said river Thames upon demorage, and he the said John Read was thereby forced and obliged to pay, and did pay, divers sums of money, amounting in the whole to a large sum of money, to wit, the sum of pounds of lawful money of Great Britain, for and on account of such demorage, and was, during such detention of the said ships or vessels, interrupted and impeded in the exercise and carrying on his said trade and business of a coal-factor, to wit, at, &c. &c. (There were several other Counts similar to the first, only other ships, &c. Damages one thousand pounds.)

V. LAWES.

LONDON, to wit. John Barber, late of, &c. [the parish where the premises bargained for were situated] was attached to answer Alexander Purfe in a plea of trespass on the case, &c.; and thereupon the said Alexander, by A. B. his attorney, complains: for that whereas, before and at the time of the making of the agreement hereafter next mentioned, the said John was possessed of a certain messuage or dwelling-house, with the appurtenances, situate in the parish and county aforesaid, for the residue of a certain term of years then to come and unexpired, and thencefore thereof granted under and by virtue of a certain indenture of lease thereof: And whereas also the said John, before and at the time of the making of the agreement hereafter next mentioned, exercised and carried

Declaration against defendant, for not fulfilling an agreement, whereby he was to give his trade of a pawnbroker up to the plaintiff, on the defendant's paying for the stock in trade.

ried on the trade and business of a pawnbroker in the aforesaid messuage or dwelling-house, and was then and there possessed of a certain large stock in trade, and of divers fixtures and implements of trade there then being in the said messuage or dwelling-house, and of and belonging to the same, and to the aforesaid trade thereof; and the said John being so possessed as aforesaid, and so exercising and carrying on such trade and business as aforesaid, it was heretofore, to wit, on, &c. at, &c. agreed, by and between the said Alexander and the said John, that the said John should assign over and give up to the said A. P. the said lease of the said messuage or dwelling-house, for the residue of the said term of years then to come therein and unexpired; and that the said John should relinquish and yield up his aforesaid trade and business of a pawnbroker so by him exercised and carried on in the said house as aforesaid, unto and in favour of him the said Alexander; and that for the said lease and the aforesaid fixtures and implements of trade the said Alexander should give and pay to the said John the sum of two hundred pounds of lawful, &c.; and that the said stock in trade, which was then and there computed to be of the value of four thousand five hundred pounds, should be appraised and valued to the said Alexander; and over and besides such valuation thereof, the said Alexander should pay and give to the said John for the same at and after the rate of five pounds per cent. on such valuation thereof; and that, for the payment of the said valuation, the said Alexander should procure one A. B. to give to the said John his the said A. B.'s bonds, to the extent of four thousand pounds, of such valuation, for one thousand pounds each, payable at two, four, six, and eight years, and his promissory note at a year, for so much money as the said stock in trade should be valued at as aforesaid above the sum of four thousand pounds; which said agreement being so made as aforesaid, he the said Alexander afterwards, to wit, on, &c. at, &c. paid, and caused to be paid, to the said John, who then and there accepted and received from the said Alexander a large sum of money, to wit, the sum of one hundred pounds, in part payment of the money to be paid under the said agreement, as and by way of earnest to bind the same, and the bargain thereby made: and thereupon afterwards, to wit, on, &c. in consideration of the several premises aforesaid, and also in consideration that the said Alexander had undertaken, and then and there faithfully promised the said John, to perform and fulfil the said agreement in all things therein contained, on his part and behalf to be performed and fulfilled, he the said John then and there undertook, and faithfully promised the said Alexander, to perform and fulfil the said agreement, in all things therein contained on his part and behalf to be performed and fulfilled: And the said Alexander in fact says, that although always after the making of the said agreement he was ready and willing, and afterwards, to wit, on, &c. at, &c. offered to value and procure the aforesaid stock in trade to be valued and appraised by proper and fit persons for that purpose, and was then and there ready and willing, and offered

to accept, take, and pay for the same, together with of the aforefaid lease of the said premises for the said term of years then to come therein and unexpired; and the said fixtures and implements of trade so being in the said premises as aforefaid, upon the terms, and according to the tenor and effect of the said agreement; and also to do and perform, and cause to be performed, all things in the said agreement contained, on his part and behalf to be performed and fulfilled, according to the tenor and effect of the said agreement; and although the said John was then and there requested by the said Alexander to execute and fulfil the said agreement with him the said Alexander: Yet the said John, not regarding their said agreement, nor his aforefaid promise and undertaking, but contriving and fraudulently intending to defraud and injure the said Alexander, did not nor would then and there, nor at any other time whatsoever, assign over or give up to the said Alexander the said lease of the said messuage for the said term of years then to come therein and unexpired, nor for any term of years whatsoever, nor would then and there, nor at any other time whatsoever, give and yield up his aforefaid trade and business of a pawnbroker therein to and in favour of him the said John, nor would then and there, or at any other time whatsoever, suffer or permit the said stock in trade of him the said John to be valued or appraised, or delivered to him the said Alexander, nor in any wise keep, perform, and fulfil his said agreement with him the said Alexander; but he so to do then and there always hitherto hath wholly and absolutely refused, and still refuses, so to do, contrary to the tenor and effect of the said agreement, and the promise and undertaking of the said John in that behalf, and in breach and violation thereof, to wit, at, &c.; whereby, and by reason of which several premises, the said Alexander hath lost and been deprived of all benefit and advantage which would otherwise have arisen and accrued to him from a completion and performance of the said agreement on the part of him the said John, and hath also lost and been deprived of a certain beneficial situation and employment which he the said Alexander, at the time of the making of the said agreement, had and held as agent and assistant to one C. D. in his trade and business of a pawnbroker, but which said situation and employ he the said Alexander, under the idea of the said John performing the said agreement, was induced to quit and resign, in order to enable him the said Alexander to perform the said agreement on his part, and to take the said premises and business therein mentioned as agreed for, to wit, at, &c. V. LAWES.

MANOR and FOREST of MACCLESFIELD, in the COUNTY of CHESTER, to wit. F. B. complains of J. W.

Declaration in the manor court against the grandfather of an

orphan, which he put apprentice to the plaintiff as a milliner, and stipulated to bind her by indenture for three years, and to give a fee in consideration of plaintiff's maintaining her, and teaching her her business. Breach, that the defendant took the apprentice away at the end of one year, and refused to bind her by indenture, or to pay the fee, by which the plaintiff lost the orphan's services, and also the chance of another apprentice with a fee.

in a plea of trespass on the case, to the damage of the said F. of thirty pounds; and thereupon the said F. by A. B. her attorney, complains: for that whereas the said F. before and at the time of the making of the two several agreements hereafter mentioned, was, and from thence continually hitherto hath been, and still is, a milliner, and the business of a milliner during all the time aforesaid, used, exercised, and carried on, to wit, at, &c. and within the jurisdiction of this court; and the said F. so using and exercising such business as aforesaid, heretofore, to wit, on, &c. at, &c. it was agreed by and between the said F. and the said J. to the effect following: that one A. B. an infant, the orphan grand-daughter of the said J. should become an apprentice duly bound by indenture to the said F. to serve her for the term of three years then next following the said agreement, as well in the said business as also as a menial servant in the house of the said F.; and that he the said J. should and would well and truly pay to the said F. the sum of five pounds of lawful money of Great Britain, as an apprentice-fee with his said grand-daughter; and that she the said F. should and would find and provide meat, drink, washing, and lodging for the said A. B. during the said term; and the said agreement being so made as aforesaid, heretofore, to wit, on, &c. at, &c. and within the jurisdiction of this court, she the said F. at the special instance and request of the said J. undertook, and then and there faithfully promised the said J. to perform and fulfil the said agreement in all things therein contained on her part and behalf to be performed and fulfilled; and in consideration thereof he the said J. undertook, and then and there faithfully promised the said F. to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled: And the said F. in fact says, that although she, afterwards, in pursuance of the said agreement, to wit, on, &c. at, &c. took and received the said A. B. into her service, on the terms and conditions aforesaid, and so there kept and continued her there for a long space of time, to wit, for one year of the said term; and although she the said F. during all the time of the said A. B.'s continuance with her the said F. there found and provided for the said A. B. meat, &c. according to the said agreement; and although the said F. was there ready and willing to accept and take the said A. B. as her apprentice duly bound by indenture for the said term of years, according to the said agreement, and then and there, to wit, on, &c. at, &c. and often afterwards, tendered and offered so to do, and then and there required the said J. to pay to the said F. the said sum of five pounds, the said apprentice-fee with the said A. B.: Yet the said J. not regarding, &c. but contriving, &c. the said F. in this behalf did not nor would, when he was so required, bind the said A. B. nor did nor would permit or suffer her to become and be bound apprentice to the said F. upon the terms of the said agreement, but then and there wholly refused so to do, or to pay the said sum of five pounds as an apprentice-fee with the said A. B. and afterwards, and within the term, to wit, at the

In the mayor
of Maccles-
field.

expiration of one year from the commencement thereof, without the leave or licence, and against the will of the said F. there took away the said A. B. and caused her to leave the service of the said F. contrary to the form and effect of the said agreement, of the said promise and undertaking of the said J. in that behalf made as aforesaid, and in breach and violation thereof, to wit, at, &c. ; whereby the said F. not only there lost and was deprived of the services and assistance of the said A. B. in the capacities aforesaid, for the residue of the said term, but also was then and there hindered and prevented from accepting and taking into her said employ and service another apprentice to her said business, to wit, one C. D. with a certain large fee as an apprentice-fee with the said C. D. whom she the said F. declined accepting as an apprentice to her in her said business, in confidence of the said promise and undertaking of the said J. that the said A. B. should remain and continue the apprentice of the said F. for the term, and in manner and form expressed in the said agreement, to wit, at, &c. *And whereas* the said F. so using and exercising such business as aforesaid, heretofore, to wit, on, &c. at, &c. it was agreed by and between the said F. and the said J. to the effect following, that is to say, that one A. B. an infant, the orphan grand-daughter of the said J. should serve the said F. for the term of three years next following the making of the said agreement, as well in the said business as also as a menial servant in the house of the said A. B. ; and that he the said J. should and would pay to the said F. the sum of five pounds of, &c. as an apprentice-fee with the said A. B. and that she the said F. should and would find and provide meat, &c. for the said A. B. during the said term ; and the said last-mentioned agreement being so made as aforesaid, heretofore, to wit, on, &c. at, &c. the said F. at the special instance and request of the said J. undertook, and then and there faithfully promised the said F. to perform, &c. (mutual promises as in first Count) : And the said F. in fact says, that although she afterwards, in pursuance of the said last-mentioned agreement, to wit, on, &c. at, &c. took and received the said A. B. into her service on the terms and conditions aforesaid, and there so kept and continued her for a long space of time, to wit, for one year of the said term ; and although she the said F. during all that time, found and provided for the said A. B. meat, &c. according to the said agreement ; and although the said F. was there ready and willing to keep and continue the said A. B. in her said service for the said term of three years, according to the said agreement, and then and there, to wit, on, &c. at, &c. and often afterwards, desired and offered so to do, and requested the said J. to pay to her the said F. the said five pounds as an apprentice-fee with the said A. B. under the said last-mentioned agreement : Yet the said John, not regarding, &c. but contriving, &c. the said F. in this behalf, did not, nor would he permit and suffer the said A. B. to serve the said A. B. for the residue of the said term of three years ; but on the contrary thereof afterwards, and within the said term, to wit, at the expiration of

ASSUMPSIT SPECIAL.—APPRENTICE.

one year from the making of the said last-mentioned agreement, without the leave or licence, and against the will of the said F. not only there took away the said A. B. from, and caused her to leave the service of the said F. but then and there refused and neglected to pay the said sum of five pounds, and still refuses to pay the same, or any part thereof, contrary to the form and effect of the said last-mentioned agreement, and the said promise and undertaking of the said J. in that behalf made as aforesaid, and in breach and violation thereof, to wit, at, &c. (3d and 4th Counts, *indebitatus assumpsit* for instructions and necessaries; 5th, 6th, and 7th Counts, common money Counts, and common conclusion.) Query as to end, whether any pledges.

THO. BARROW.

Opinion when I doubt how far, in a complicated to declare generally in *indebitatus assumpsit*, and when specially. a general *indebitatus assumpsit*. I take it,

that in such form of action, there must always be an equivalent received by the defendant to raise in him an obligation to pay; but in case the only benefit the defendant has received, for which he ought to make a compensation for the instruction afforded the infant at his request (for its maintenance is discharged by those services it performed during the period in which that maintenance was supplied), which by no means constitutes the whole of plaintiff's demand, composed as it is of that consideration, together with the loss of the subsequent services of the infant, and the fee agreed for (or in lieu of that the loss of another apprentice with another fee), for all which the plaintiff ought to receive a satisfaction as a loss to her, arising out of the breach of contract solemnly entered into by the defendant; but how can the Court and jury try the truth of those facts, in order to give damages proportioned to the justice of the plaintiff's claim, unless they are specially stated in her declaration; for, were it established, that they might be recovered under the general form of declaring before mentioned, this absurdity must necessarily ensue, that the plaintiff's case, and that which purports to be a formal and authentic statement of that case, would be materially different; the latter alleging one thing, and the prof. establishing another, which is not only contrary to every principle of pleading, but this unjust consequence will always follow, that a defendant will thereby be subject to be surprized and fixed with a demand which a fair notice would or might have enabled him to satisfy or explain away.

In short, I take the rule in all those cases to be, that when one person is un-

der a legal obligation to pay money to another, as the value of something equivalent, the law will imply an express promise to pay (though none may have been made), in support of the action of general *indebitatus assumpsit* for the recovery of it; but where the defendant has not received an equivalent for what is demanded, but by a breach of some express contract, or some moral duty to be performed on his part, the said plaintiff has suffered a civil injury that ought to be redressed in damages, a consideration is thereby raised in law for the purposes of substantial justice between the parties, out of all the circumstances of the case, which the plaintiff should state specially in his declaration, that the law might give an adequate recompence in damages.

Such circumstances I think exist in the present case, and have endeavoured to arrange them according to the rule I have mentioned, which, if the plaintiff can prove as stated, will intitle her to damages equal to the loss she has sustained.

Should it be attempted to bring the case within the statute of Frauds, as an undertaking for the default of another, I am of opinion it cannot be so considered, because the defendant, standing in *loco parentis*, was competent to make the contract in question for the infant. But admitting that the defendant and the infant had been strangers, the contract, such as it was, has been in part executed, and therefore not within the mischief of the statute; and were that too out of the question, the infant neither did contract, nor was of capacity to do it; and therefore the undertaking on the part of the defendant was originally and personally binding.

If it can be proved, as stated in the case, that the defendant is the general agent of the husband in all his concerns, I think the action properly brought.

THO. BARROW.
LONDON,

LONDON, to wit. W. P. and G. P. late of, &c. were attached to answer M. B. in a plea of trespass on the case, &c. ; and thereupon the said plaintiff, by his attorney, complains: for that whereas the said plaintiff heretofore, to wit, on, &c. imported a large quantity or parcel of raw coffee, to wit, one thousand one hundred weight of raw coffee, in a certain ship or vessel called the , from Jamaica in parts beyond the seas to Great Britain, to wit, into the port of London, to wit, at London, &c. And whereas afterwards, to wit, on the same day and year last aforesaid, one J. D. who was master of the said ship in which the said coffee was imported, made no entry or report upon oath at his majesty's custom-house, of the burthen, contents, and lading of such ship, in pursuance of the direction of the statutes made in the thirteenth and fourteenth years of the reign of King Charles, intituled, "An Act for preventing Frauds and regulating Abuses in his Majesty's Customs:" And whereas the said defendants, on the twenty-seventh July 1773 aforesaid, and long before, had used, exercised, and carried on, and still do use, exercise, and carry on the trade, business, and employment of brokers, to wit, at, &c. aforesaid; and the said plaintiff having so imported the said coffee as aforesaid, and the same being on board the said ship or vessel as aforesaid, and the said defendants, so using and exercising the trade and business of brokers as aforesaid, and thirty days not being elapsed and expired since the said J. D. had made the said entry and report as aforesaid, to wit, on said twenty-seventh July 1773, at, &c. aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendants, had employed the said defendants to make a due entry on the behalf of said plaintiff, as importer of the said coffee as aforesaid, of the said coffee, with an officer of excise appointed by the commissioners of the excise in England for that purpose, and to land the same, to be put in warehouses, within thirty days next after the said J. D. so made the said entry or report, according to the form of the statute in such case made and provided, for a certain reasonable reward to be paid by the said plaintiff to the said defendants for the same, they the said defendants undertook, and then and there faithfully promised the said plaintiff to make a due entry on behalf of the said plaintiff, as importer of the coffee as aforesaid, of the said coffee, with an officer of excise appointed by the commissioners of excise in England for that purpose, and to land the same, to be put in warehouses, within thirty days next after the said J. D. so made the said entry or report as aforesaid, according to the form of the statute in such case made and provided: Yet the said defendants, not regarding, &c. but contriving, &c. did not make due entry of the said coffee of the said plaintiff with such officer of excise as aforesaid, and land the same, to be put in warehouses, within thirty days next after the said J. D. made the said entry or report as aforesaid, according to the form of the statute in such case made and provided, and according to their said promise and undertaking, although the said de-

Declaration against a broker, for not making an entry of some coffee imported, with the proper officer of excise, and not landing the same to be put in warehouses, as directed by stat. per quod the coffee was seized,

ASSUMPSIT SPECIAL.—NEGLIGENCE, BROKER.

defendants were often requested by the said plaintiff so to do; but to do this the said defendants wholly neglected and omitted, contrary to their said promise and undertaking; by means whereof, and by force of the statute in that case made and provided, the said coffee of said plaintiff, for want of such landing and entry thereof within the said thirty days, became forfeited; and being so forfeited, afterwards, to wit, on thirty-first August, were seized as forfeited by the officers of his majesty's excise, and were and are wholly lost to the said plaintiff, to wit, at, &c. aforesaid. And whereas also the said plaintiff heretofore, to wit, on said twenty-seventh July 1773 aforesaid, imported another large quantity of coffee, to wit, pounds of coffee, in another ship or vessel called the from parts beyond the seas, to wit, from Jamaica into Great Britain, to wit, into the port of London, *by way of merchandize, to be there unshipped, to be laid on land, the same being merchandize for which divers customs, subsidies, and other duties were then due and payable to his majesty upon the unshipping the same, to be laid on land, to wit, &c.* And whereas the said defendants, so being brokers as aforesaid, and the said plaintiff having so imported the said coffee as last aforesaid, on the same day and year last aforesaid, at, &c. aforesaid, in consideration that the said plaintiff, at the special instance and request of said defendants, had employed the said defendants to *unship and land* the said last-mentioned coffee *for the use of the said plaintiff*, and had undertaken and faithfully promised to pay to them the said defendants a certain reasonable reward or sum of money for their labour and trouble therein, *and to pay them all such sums and sums of money as they should pay for the customs, subsidies, and other duties as were due and payable to our said lord the king upon the unshipping of the same, to be laid on land as aforesaid*, they the said defendants undertook, and then and there faithfully promised the said plaintiff, to *unship and land* the said last-mentioned coffee of said plaintiff from on board the said last-mentioned ship or vessel, and to pay, or cause to be paid or lawfully tendered, or to agree for all such customs, subsidies, and other duties as are due and payable to our said lord the king upon the unshipping of the same, in order to be laid on land before the same should be unshipped, to be laden on land according to the form of the statute in that case made and provided: Yet the said defendants, not regarding, &c. did unship, to be laid on land, the said last-mentioned coffee, the subsidies and other duties due and payable to our said sovereign lord the king for the same goods not being first paid or lawfully tendered to the collector thereof, or his deputy, with the consent and agreement of the comptroller or surveyor there, or one of them at least, nor agreed with them for the same in the custom-house, according to the statute in that case made and provided, contrary to the form of the said statute and the said promise and undertaking of the said defendant; by means whereof the said last-mentioned coffee became forfeited; and being so forfeited, the said coffee was afterwards seized and arrested by

T. D.

T. D. and W. N. to the use of his said majesty as forfeited, and afterwards, to wit, in Michaelmas term in fourteenth year of the reign of our lord the now king, upon a certain information duly exhibited in his majesty's court of exchequer at Westminster, on the information of the said *T. D. and W. N.* it was adjudged by the barons of the same court that the said last-mentioned coffee should, for the reasons aforesaid, remain forfeited, and that the same, and every part thereof, should be delivered to the commissioners of his majesty's excise, to be by them publicly sold, according to the statute in that case made and provided, as by the said information and judgment remaining of record in the said court of exchequer more fully appears; by means whereof the said plaintiff hath wholly lost the said coffee, to wit, at, &c. (3d Count, money had and received; and breach.)

GEO. WOOD.

LANCASHIRE, to wit. C. F. churchwarden, R. A. and J. F. overseers of the poor of the parish of _____, in the county of _____, complain of Richard Mason being, &c.: for that whereas one E. B. of the township of M. aforesaid in the county aforesaid, single woman, on her voluntary examination taken upon oath at S. in A. in the said county, on thirtieth December 1775, before one R. H. esquire, one of his majesty's justices assigned to keep the peace of our said lord the king, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said county, did make oath and say, that she believed herself to be with child of a bastard-child or children, which, when born, was and were likely to become chargeable to the township of M. or such other township, parish, or place, where it or they should happen to be born; and the said Elizabeth did then and there, on the said oath, charge James Dilley, of R. in the said county, husbandman, with having gotten her with child of the said bastard-child or children, and *that he was the only true and only father thereof*: and thereupon the said R. H. esquire, so being one of his majesty's justices of the peace as aforesaid, afterwards, to wit, on the said thirtieth December 1773, at S. in A. aforesaid, upon application made to him by one of the overseers of the poor of the said township of M. as aforesaid, according to the form of the statute in that case made and provided, issued a warrant under his hand and seal, directed to all high and petty constables, and other civil officers whom it might concern, in the county of L. especially to the constables of R. aforesaid, and also to R. S. and W. H. whereby, after reciting that the said E. B. of M. in the county of L. aforesaid, single woman, had voluntarily upon her oath declared before him the said R. H. esquire, one of his majesty's justices of the peace and quorum in and for the said county, that she believed herself to be with child of a bastard-child or children, which, when born, was or were likely to become chargeable to the said township of M. or such other township, parish, or place where it or they should

Declaration by the churchwardens and overseers of a parish against defendant, for promising one J. D. who had been apprehended by a justice's warrant for a bastard-child, to escape out of his custody, contrary to his promise to bring him before the justice, in consideration of plaintiff's permitting him to take charge of J. D.

ASSUMPSIT SPECIAL.—By CHURCHWARDENS.

should happen to be born; and that she the said E. B. had on oath charged J. D. of, &c. with having gotten her with child of the said bastard-child or children; and that he was the true and only father thereof; the said justice did therefore, upon application made by one of the overseers of the township in his majesty's name, command them, and every of them, that they should immediately, on sight thereof, apprehend the said J. D. and bring him before him or some other of his majesty's justices of the peace in and for the said county, to be committed to the common jail or some other house of correction in and for the said county, unless he should give security to indemnify the said township of M. or any other township, parish, or place, where the said bastard-child or children should happen to be born, or should enter into a recognizance with a sufficient security, upon condition to appear at the then next general quarter sessions of the peace to be holden by adjournment at P. in and for the said county, and to abide by and perform such orders *as should be made and provided*; by virtue of which said warrant the said R. and W. afterwards, to wit, on the same day and year last aforesaid, at R. aforesaid, apprehended the said J. D. and were then and there about to convey him before the said R. H. esquire, so being one of his majesty's justices of the peace as aforesaid, according to the exigency of the said warrant: and thereupon afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, in consideration that the said R. and W. at the special instance and request of the said R. would deliver the said J. D. unto his the said R.'s custody, the said R. undertook, and then and there faithfully promised the said C. R. and J. that he the said R. would forthwith bring the said James to and before the said justice, in order to comply with the exigency of the said warrant; And the said C. R. and J. aver, that they, confiding in the said promise and undertaking of the said R. and in hopes of the faithful performance thereof, at the said instance and request of the said Richard, afterwards, to wit, on, &c. at, &c. did deliver the said James into his the said Richard's custody: Yet, &c. did not forthwith, or ever afterwards, bring the said J. D. before the said justice of the peace or any other of his majesty's justices of the peace in and for the said county, for the purpose aforesaid; but to do the same wholly neglected and refused; and afterwards, to wit, on, &c. at, &c. permitted and suffered the said James D. to escape and go at large where he would and pleased; whereby the said James hath hitherto absconded and secreted himself, and still absconds and secretes himself, to the said C. R. and J. unknown, and has not hitherto been brought before his majesty's justices of the peace, or any other justice of the peace in and for the said county, in order to comply with the exigency of the said warrant; and the said E. B. afterwards, to wit, on sixteenth May 1774, was delivered of a female bastard-child within the said township of M. being the child whereof she was pregnant at the time of her examination, and which child is still living, to wit, at M. aforesaid, and

This was a verbal promise.

ASSUMPSIT SPECIAL.—BY OVERSEERS, FOR MISFEASANCE. 25

and by reason whereof the overseers of the poor and other inhabitants of said township of M. have been put to great charge and expence in and about the birth and maintenance of the said child, and have wholly lost the means of compelling the said James to maintain and support the said child at M. aforesaid, to the damage of the said C. R. and J. overseers as aforesaid, of pounds; and therefore they bring suit, &c.

OPINION. I am inclined to think, that a special action may be maintained against Mason, for permitting Disley to escape, contrary to his said promise and undertaking; for though Mason had not any consideration for undertaking the custody of Disley, yet as he actually undertook it, and entered upon it, he is, as I apprehend, answer-

able for it, and liable to an action for the non performance of it, occasioned by his neglect; and I think, as the inhabitants of the township of M. are injured by it, the action should be in the name of the overseers and churchwardens, who are in this case the representatives of the township at large.

G. WOOD.

SOMERSETSHIRE, to wit. S. W. W. G. and R. T. Declaration by complain of S. C. being, &c. : for that whereas the said plain-
tiffs and one A. B. since deceased, in his lifetime, from Easter
week A. D. 1785, and continually from thenceforth until Easter
week A. D. 1786, were overseers of the poor of the parish of D.
in the said county of S. in due manner nominated and appointed, and
as such overseers of the poor of the said parish, during the time aforesaid,
were possessed of or entitled to divers goods, monies, and effects,
of great amount and value, to wit, the amount or value of one
thousand pounds of lawful money of Great Britain, for the pur-
pose of using, applying, and appropriating the same to and for the
support, maintenance, relief, benefit, and advantage, and for and
on account of the poor of the said parish, to wit, at, &c. in, &c. :
And whereas afterwards, and during the time of the said plain-
tiffs and A. B. since deceased, in his lifetime, being overseers as
aforesaid, to wit, on, &c. at, &c. they the said plaintiffs and A. B.
since deceased, in his lifetime, then and there retained and em-
ployed the said S. C. at his special instance and request, as their
servant or agent, to look after and take care of the poor of the said
parish, during the time that they the said plaintiffs and A. B. since
deceased, in his lifetime, remained and continued overseers as
aforesaid, and then and there entrusted the said goods, monies,
and effects so belonging to them, as such overseers as aforesaid,
with the said S. C. as their servant or agent for him the said
S. C. to use, apply, and dispose of the same for the main-
tenance, support, benefit, and advantage of the poor of the said
parish, to wit, at, &c. in, &c. : and the said S. C. being so re-
tained, employed, and entrusted as aforesaid, in consideration
thereof, afterwards, to wit, on, &c. at, &c. in, &c. undertook,
and then and there faithfully promised the said plaintiffs and A. B.
since deceased, in his lifetime, to do, execute, and perform the
said service, trust, and employment faithfully : Yet the said S. C.
not regarding his said promise so by him made as aforesaid, but
con-

Declaration by
three persons,
who with a
fourth, since de-
ceased, had been
overseers of the
poor, against de-
fendant, who
was employed
by them to take
care of the poor,
for embezzling
goods and pro-
visions.

ASSUMPSIT SPECIAL.—AGAINST A JOURNEYMAN,

contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiffs and A. B. since deceased, in his lifetime, and the said plaintiffs, since his decease, in this behalf, did not faithfully do, execute, and perform the said service, trust, or employment; but on the contrary thereof, afterwards, and during the time aforesaid, to wit, on, &c. and on divers other days and times afterwards, at, &c. in, &c. used, applied, and disposed of divers large quantities of the said goods and effects, to wit, fifty yards of woollen cloth, &c. of the value of two hundred pounds of like lawful money, for other and different purposes than as aforesaid, and then and there used and applied, converted and disposed of the same to and for his own use and benefit, emolument, and advantage, to wit, at, &c. in, &c.. And whereas, &c. (this Count same as first, in consideration that plaintiffs, as overseers, *had entrusted, &c.* Add the common Counts.)

Drawn by MR. CROMPTON.

Defendant pleaded the general issue, and gave a notice of set-off for work and labour.

Declaration by a maltster against his journeyman, for so carelessly making 100 coombs of barley into malt, that he spoiled the same, and rendered them unfit for sale.

SUFFOLK, to wit. W. L. v. S. P.: for that whereas the said William Long, before the making of the promise and undertaking hereinafter next mentioned, to wit, on, &c. was, and continually from thenceforth hitherto hath been and still is, a maltster, or a maker of barley into malt, and the trade, business, and employment of a maltster, or the making of barley into malt, during all the time aforesaid, hath used, exercised, and carried on for profit and gain, to wit, at, &c.: And whereas the said William afterwards, and before the making of the promise and undertaking hereinafter next mentioned, to wit, on, &c. at, &c. had, at the special instance and request of the said defendant, hired and retained him the said defendant, for certain reasonable wages to be therefore paid him by the said plaintiff, as and to be his servant in the making of barley into malt in his aforesaid trade and business: And whereas the said defendant, being so retained and hired as aforesaid, in consideration of the premises, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said plaintiff, that he the said defendant, during the time that he the said defendant remained in the service of the said plaintiff as such servant as aforesaid, would use all due care, diligence, and fidelity, in the making of barley, intrusted to him, into malt, in the aforesaid trade or business, and in the management and taking care of his aforesaid trade and business: And the said William in fact says, that afterwards, and whilst the said defendant remained and continued in his the said plaintiff's service as such servant as aforesaid, to wit, on, &c. at, &c. was entrusted with divers large quantities of barley, to wit, one hundred coombs of barley, of great value, to wit, of the value of five hundred pounds of lawful money of Great Britain, of him the said plaintiff, to be by him the said defendant, as such servant as aforesaid, made into malt, in the way of his the said

said plaintiff's trade and business, according to the form and effect of his said promise and undertaking so by him the said defendant made as aforesaid: Yet the said defendant, not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, did not, during the time he the said defendant remained in the service of the said plaintiff, as such servant as aforesaid, use all due care, diligence, and fidelity in the making of the aforesaid one hundred coombs of barley so intrusted to him as aforesaid, into malt; but on the contrary thereof, afterwards, to wit, on, &c. at, &c. (1) *so very carelessly, negligently, remissly, and improperly behaved and conducted himself in the making of the aforesaid barley into malt, and in the management and taking care of the same, and then and there took so little and such bad care in the making of the same barley into malt, that through the mere neglect and default of the said defendant, and through his carelessness and inattention (the said barley being made into malt), the said malt so by him the said defendant made therefrom, became* and was totally spoiled and rendered useless, unfit for sale, and of no use or value whatsoever to the said plaintiff; whereby he the said plaintiff not only lost and was deprived of the value of the aforesaid barley so made into malt, and of divers great gains and profits which would have arisen to him from the sale of the said malt; but the said William hath, by reason of the said barley's being made into malt, been liable, and still is liable, to pay divers large sums of money, to wit, the sum of two hundred pounds of lawful money of Great Britain, to our sovereign lord the king for the duties of excise, payable for or in respect of the said malt, to wit, at, &c. in, &c. And whereas the said plaintiff, being such

(1) "wilfully, wrongfully, injuriously, and wantonly behaved, &c. in the making of, &c. that he the said defendant in the making of the said barley into malt, wilfully, &c. damaged, injured, and spoiled the same, inasmuch that the said barley, after the same was made into malt, and every part became"

2d Count.

maltster or maker of barley into malt as aforesaid, and the said defendant being so retained and hired as aforesaid, in consideration of the said last-mentioned premises, afterwards, to wit, on, &c. at, &c. he the said defendant undertook, &c. the said plaintiff, that he the said defendant would, during the time he remained in the service of the said plaintiff as such servant as aforesaid, use all due care, &c. in the making the barley entrusted to him into malt, in the aforesaid trade and business, and in the management and taking care of his aforesaid trade and business: And the said plaintiff in fact says, that afterwards, and whilst the said defendant remained and continued in his the said plaintiff's service, as such servant as aforesaid, to wit, on, &c. at, &c. was entrusted with divers other large quantities of barley, to wit, &c. of great value, &c. of him the said plaintiff, to be by him the said defendant, as such servant as aforesaid, made into malt, in the way of his the said plaintiff's trade and business, according to the form and effect of his said last-mentioned promise and undertaking so by the said Samuel made as last aforesaid: Yet, &c. (conclude this Count from this + same as first, only omitting what is in Italic and inserting what is in the margin). And whereas also the said plaintiff, long before the making of the promise and undertaking here-

3d Count.

inafter

ASSUMPSIT SPECIAL.—FOR REWARDS

inafter mentioned, to wit, *on, &c. was, and continually from thence hitherto hath been, and still is, such maltster as aforesaid: And whereas the said Samuel afterwards, and before the making of the promise and undertaking hereinafter mentioned, to wit, on, &c. was retained by the said plaintiff as his servant as aforesaid: And whereas the said plaintiff, being such maltster as aforesaid; and the said Samuel being so retained and hired as aforesaid; in consideration of the last-mentioned premises, afterwards, on, &c. at, &c. he the said defendant undertook, &c. the said plaintiff, that he the said defendant would, during the time he remained in the service of the said plaintiff as such servant as last aforesaid, take due and proper care of all barley and malt of and belonging to him the said plaintiff, committed to his the said defendant's care as servant as aforesaid, and would at all times duly account to the said plaintiff for the same barley and malt so committed to his care: And the said William in fact says, that afterwards, and whilst the said defendant remained and continued in his the said plaintiff's service as such servant as aforesaid, to wit, on, &c. at, &c. he the said defendant was entrusted with divers large quantities of barley and malt, to wit, one hundred coombs of other barley and one thousand coombs of other malt of him the said plaintiff, of great value, to wit, of, &c. to be by him the said defendant, as such servant as aforesaid, taken care of and for him the said plaintiff, and to account for the same, according to the form and effect of his said promise and undertaking so by him made as last aforesaid: Yet the said defendant, not regarding, &c. but contriving, &c. the said plaintiff in this behalf, did not, during the time he the said defendant remained in the service of the said plaintiff, take due and proper care of the aforesaid barley so committed to his care as last aforesaid, or any part thereof, and did not duly account to the said plaintiff for the said barley and malt so committed to his care as last aforesaid, according to the form and effect of his said last-mentioned promise and undertaking; but on the contrary thereof hath wholly refused to account for the same barley and malt last-mentioned, and every part thereof, and hath converted and disposed of the same to his own use; and by reason thereof he the said plaintiff hath wholly lost the said last-mentioned barley and malt, to wit, at, &c. (Add the money Counts, and common conclusion.)

Drawn by MR. GRAHAM.

Plaintiff obtained a verdict, and 15*l.* damages.

Declaration in
assumpsit, for a
reward prom-
ised by an adver-
tisement, for
procuring de-
fendant's ser-
vant, who had

FOR that whereas the said George Ernst and John Dorville, heretofore, to wit, on the twenty-seventh day of February in the year of Our Lord 1790, at London, in the parish of St. Mary-le-Bow, in the ward of Cheap, did *cause to* be printed and published a certain printed hand-bill, dated from a certain place, called the

absconded with a large sum of money, to be apprehended.

Public

Public Office, Bow-street, Saturday, February twenty-seventh, 1792, containing in substance and to the effect following, that is to say, "Ran away! Ran away! Ran away! Niels Karré, clerk to a merchant in the city (meaning clerk to them the said George Ernst and John Dorville), with a large sum of money;" and by the said hand-bill they the said defendants did then and there, to wit, on the day and year afore said, at London afore said, in the parish and ward afore said, promise, that whoever would apprehend the said Niels Karré, or give such information to Sir Sampson Wright at the above office (meaning the said Public Office in Bow-street) as might be the means of his being apprehended, should receive a reward of fifty guineas; and that a further reward of fifty guineas would be paid on conviction of the said Niels Karré: And the said plaintiff further saith, that he, confiding in the said promise and undertaking of them the said defendants, so by them made as afore said, did afterwards, to wit, on the day and year afore said, at London afore said, in the parish and ward afore said, *bestow and apply great labour and diligence in and about the discovering the said Niels Karré*; and having thereby discovered the said Niels Karré, he the said plaintiff then and there, to wit, on the day and year afore said, at London afore said, in the parish and ward afore said, *did give such information* to the said Sir Sampson Wright, at the Public Office in Bow-street, in the said hand-bill mentioned, *as was the means of the said Niels Karré being afterwards apprehended*; and the said Niels Karré, by means of such information so by the said plaintiff given as afore said, was afterwards, to wit, on the day and year afore said, at London afore said, in the parish and ward afore said, apprehended, as the said defendants then and there well knew and had notice; whereby the said defendants then and there became liable to pay the said plaintiff the said sum of fifty-two pounds ten shillings, according to the tenor and effect of their said promise so by them made in this behalf as afore said. And whereas, heretofore, to wit, on the twenty-seventh day of February, in the year of Our Lord 1790 afore said, at London afore said, in the parish and ward afore said, one Niels Karré, who before that time had been a clerk or servant of the said defendants, was suspected of having absconded and ran away with a large sum of money, the property of them the said defendants; and thereupon afterwards, to wit, on the day and year last afore said, at London afore said, in the parish and ward afore said, in consideration that any one would give such information respecting the said Niels Karré as might be the means of his being apprehended, they the said defendants undertook, and then and there faithfully promised, to pay such person who should give such information the sum of fifty-two pounds ten shillings of lawful money of Great Britain, when they the said defendants should be thereto afterwards requested: And the said plaintiff further saith, that he, confiding in the said last-mentioned promise and undertaking of the said defendants, so by them made as afore said, having by much labour and diligence made a discovery respecting the said Niels Karré, did

2d Count, more
general.

ASSUMPSIT SPECIAL.—FOR REWARDS, &c.

did afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, give such information respecting the said N. K. to the said defendants, that by means of such information the said N. K. was afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, apprehended, as they the said defendants then and there well knew and had notice; whereby the said defendants then and there became liable to pay to the said plaintiff the said sum of fifty-two pounds ten shillings, according to the tenor and effect of the said last-mentioned promise and undertaking so by them made as aforesaid.

N. B. This cause was tried before Lord Kenyon at Guildhall, London, when it appeared in evidence, and was relied on by way of defence, that the party who had actually apprehended the felon had applied for and received the reward; but

Lord Kenyon held, that the plaintiff was, notwithstanding, entitled to recover; for both were entitled—the tenor of the advertisement and the policy of the law required it.—*Ex relat. Mr. Henderson.*

W. B.

Declaration against an executor, for a reward advertised for discovering a servant of his testator, who had robbed her master.

2d Count, more general.

FOR that whereas the said Arthur Charlotte, in his lifetime, to wit, on the seventeenth day of September in the year, &c. 1779, at Dudley, in the county aforesaid, charged and alledged that one Ann Simmonds, then late a servant to the said A. had then lately defrauded him the said A. and other people, of money, wearing apparel, and table linen, and other things of value, to a great amount; and thereupon the said A. afterwards, to wit, on the same day and year aforesaid, at Dudley aforesaid, in the county aforesaid, undertook, and then and there faithfully promised, that if any person would discover the said Ann S. so that she might be brought to justice, such person should receive twenty pounds of him the said A. C.: And the said John in fact faith, that he, confiding in the said promise and undertaking of the said Arthur, afterwards, to wit, on the twenty-third day of February in the year of Our Lord 1779, at Dudley aforesaid, did discover the said Ann S. to the said Arthur; and the said Ann afterwards, to wit, on the day and year last aforesaid, was committed to the custody of the keeper of the gaol at Worcester, to answer for the said offence; whereof the said A. in his lifetime, afterwards, to wit, on the day and year last aforesaid, at Dudley aforesaid, in the county aforesaid, had notice; and by reason of the premises the said Arthur became liable to pay the said sum of twenty pounds to the said John, when he the said Arthur should be thereunto afterwards requested. And whereas also afterwards, to wit, on the twenty-third day of February in the year of Our Lord 1779, at Dudley aforesaid, in the county aforesaid, in consideration that the said John, at the special instance and request of the said Arthur, in his lifetime, had before that time caused and procured one Ann S. who then and there was charged by the said Arthur to have then lately defrauded him the said Arthur, and other people, of money, wearing apparel, table linen, and other things of value, to a great amount,

amount, to be taken into custody to be detained in custody by the said A. to answer the last-mentioned charge of the said A. he the said A. afterwards, to wit, on the same day and year last aforesaid, at D. aforesaid, in the county aforesaid, undertook, and to the said John faithfully promised, to pay to him the sum of twenty pounds of lawful money of Great Britain, whenever afterwards he the said A. should be thereunto requested.

W. BALDWIN.

Copy of the Advertisement.

“WORCESTERSHIRE. Whereas Ann Summers, late servant to Arthur Charlotte, of Fladbury, Esq. hath lately defrauded her said master, and other people, of money, wearing apparel, table linen, and other things of value, to a great amount.—If any person will discover the said Ann Summers, so that she may be brought to justice, shall receive 20l. reward.”

This was inserted in Barrow's Worcester Journal on the 17th of September 1778, and not having the desired effect,

another, the same, only concluding, “shall receive 20l. of one Arthur Charlotte.”

The plaintiff apprehended said A. S. on the 23d of February 1779, and she was committed to Worcester Castle; when the jury, in Lent Assizes 1779, threw out the bill.

This action was tried Summer Assizes 1779, at Worcester, and verdict for plaintiff.

Both the foregoing precedents copied from Henderson's 15th Vol. fo. 222 224.

W. B.

S. and M. Easter Term, 31. Geo. 2.

MIDDLESEX. William Finch and William Hutchins, church-wardens of the parish of Ashred, otherwise Easted, in the county of Surry, and William King and William Weston, overseers of the poor of the same parish, complain of William Farmer, church-warden of the hamlet of Hammersmith in the parish of Fulham in the county of Middlesex, of Mr. William Roberts and Daniel Springthorpe, overseers of the poor of the same hamlet, being, &c. of a plea of trespass on the case: for that whereas heretofore, before the time of making the promises and undertakings hereafter mentioned, to wit, on the second day of February in the year of Our Lord 1788, to wit, at Westminster in the county of Middlesex, one Mary Watson, single woman, whose legal settlement then was in the said parish of Ashred, was delivered of a male bastard-child, in the said hamlet of Hammersmith, which said bastard-child thereby became and was legally settled in the said last-mentioned hamlet, and was by them liable to be maintained, and was afterwards, and before the making of the promises and undertakings hereafter mentioned, duly removed with its said mother for nurture, from and out of the said hamlet of H. to the said parish of A.; and the said Mary W. and her said child, being so removed and remaining in the said parish of Ashred, afterwards, and before the making of the promises and undertakings hereafter mentioned, to wit, on the eleventh day of July in the year of Our Lord 1788, to wit, at Westminster aforesaid in the

Declaration in *assumpsit*, by the church-wardens and overseers of the poor of one parish against those of another, upon an order of justices for the maintenance of a bastard-child born in the last-mentioned parish, but removed with its mother to the first mentioned parish, for nurture.

1st Count, for arrears antecedent to the present officers coming into office.

2d Count, for arrears accrued due in their own time.

* For Maintenance, &c. of Bastards, Paupers.

said

ASSUMPSIT.—BY AND AGAINST CHURCHWARDENS;

said county of Middlesex, complaint was made unto Sir Sampson Wright, knight, and William Addington, esquire, two of his majesty's justices of the peace in and for the said county of Middlesex, by the church-wardens and overseers of the poor of the said parish of Aughted, that the church-wardens and overseers of the poor of the said hamlet of Hammersmith had refused to maintain the said bastard child; and the said complaint being so made as aforesaid, they the said last-mentioned justices thereupon then and there, by their summons under their respective hands and seals, duly made out and directed to the church-wardens and overseers of the poor of the said hamlet of H. in his majesty's name required the said last-mentioned church-wardens and overseers personally to be and appear before them the said justices at the Public Office in Bow-street, on Thursday the seventeenth day of July then instant, at eleven o'clock in the forenoon, then and there to shew cause why the said last-mentioned church-wardens and overseers should not maintain the said bastard-child; in obedience to which said summons, afterwards, and before the making of the promises and undertakings hereafter mentioned, to wit, on the said seventeenth day of July in the year of Our Lord 1788, at the Public Office in Bow-street, to wit, at Westminster in the said county of Middlesex, Thomas Skinner, then one of the overseers of the poor of the said hamlet of H. then and there appeared before the said last-mentioned justices, in pursuance of the said summons; but did not shew sufficient cause why the church-wardens and overseers of the poor of the said hamlet of Hammersmith should not pay unto the church-wardens and overseers of the poor of the said parish of Aughted, a sufficient sum towards the maintenance of the said child: wherefore they the said last-mentioned justices then and there by their order, duly made out under their hands and seals, bearing date the day and year last aforesaid, did order that the said church-wardens and overseers of the poor of the said hamlet of H. should pay, or cause to be paid, to the church-wardens and overseers of the poor of the said parish of Easted, or some or one of them, the sum of two shillings and sixpence weekly and every week from the date of the said order, for and towards the support and maintenance of the said child, for and during so long as he should remain with his said mother as a nurse child at the expence of the said hamlet of Hammersmith; which said order, so made as aforesaid, after the making thereof, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, was duly served upon the church-wardens and overseers of the poor of the said hamlet of H. for the time being, and the same still remains in full force and unaltered, to wit, at Westminster aforesaid: And the said plaintiffs, church-wardens and overseers of the poor of the parish of Aughted aforesaid, in fact say, that afterwards, and before the making of the said last-mentioned order, hitherto, the said Mary W. and her said son remained in the said parish of Aughted, during all which time the said child was there a nurse child with its said mother, at the expence

of

of the said hamlet of H. within the true intent and meaning of the said order, to wit, at Westminster aforesaid; and that the said church-wardens and overseers of the poor of the said parish of Ashsted, laid out, expended, and paid a large sum of money, to wit, the sum of eighteen pounds twelve shillings and sixpence of lawful money of Great Britain, in and about the maintenance of the said child; of which said premises the said defendants, church-wardens, &c. at Westminster aforesaid, in the county aforesaid, had due notice: whereby and by reason of which said several premises, the said defendants, church-wardens, &c. became liable to pay to the said plaintiffs, church-wardens, &c. a large sum of money, to wit, the sum of seven pounds ten shillings, for a great part of the said time, to wit, sixty weeks of the said time, ending on the twenty-sixth day of May in the year 1791 (the residue of the said expenditure of eighteen pounds twelve shillings and sixpence, on account of the said maintenance of the said child, having been duly paid to the church-wardens and overseers of the poor of the said parish of Ashsted), being at and after the rate of two shillings and sixpence per week, for the said sixty weeks, towards the support and maintenance of the said bastard-child, so remaining with his said mother as a nurse child at the parish of Ashsted, at the expence of the said hamlet of H.; and being so liable, they the said defendants, church-wardens, &c. aforesaid, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said plaintiffs, church-wardens, &c. to pay them the said seven pounds ten shillings when they the said defendants should be thereto afterwards requested: *And the said plaintiffs*, church-wardens, &c. in fact 2d Count. further say, that after they became and were such church-wardens and overseers of the poor of the said parish of A. as aforesaid, and after the said defendants became and were such church-wardens and overseers of the poor of the said hamlet of H. as aforesaid, and whilst the said order, so made as aforesaid, remained in full force and unaltered, and whilst the said child so remained and continued with its said mother as a nurse child at the said parish of A. at the expence of the said hamlet of H. within the true intent and meaning of the said order, to wit, on the said twenty-sixth day of May in the year of Our Lord 1791, to wit, at Westminster aforesaid, a large sum of money, to wit, the sum of ten shillings of like lawful money, became and was due and payable from the said defendants as such church-wardens, &c.; and they then and there, by force of the said order, became liable to pay the same to the said plaintiffs, as such church-wardens, &c. for divers, to wit, four payments of two shillings and sixpence per week, by the said order directed to be made for divers, to wit, four weeks, elapsed after the said plaintiffs became such church-wardens, &c. as aforesaid, and ending at the day and year last aforesaid, for and towards the maintenance and support of the said bastard-child, so remaining with its said mother at the said parish of Ashsted, as a nurse child, under and by virtue of the said

ASSUMPSIT SPECIAL.—ON CHARTER-PARTY.

order ; of which the said defendants afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, had notice ; and being soliable, they the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, undertook, and then and there faithfully promised the said plaintiffs, as such church-wardens, &c. as aforesaid, to pay them the said last-mentioned sum of money when they the said defendants should be thereto afterwards requested. And whereas the said defendants, church-wardens, &c. aforesaid, afterwards, to wit, on the twenty-eighth day of May, in the year last aforesaid, at Westminster, in the county aforesaid, were indebted to the said plaintiffs, church-wardens, &c. in twenty pounds of like lawful money, for money by them the said plaintiffs before that laid out, expended, and paid to and for the use of the said defendants, church-wardens, &c. and at their request ; and being so indebted, they the said defendants in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said plaintiffs, church-wardens, &c. to pay them the said last-mentioned sum of money when they the said defendants should be thereto afterwards requested, (Counts for money had and received ; account stated ; and common conclusion ; pledges ; &c.)

T. BARROW.

Easter Term, 32. Geo. 3. In the Common Pleas.

Declaration in
special *assumpsit*,
on a charter-
party of af-
freightment.

LONDON, to wit. William Osborne was attached to answer George Pearson. of a plea of trespass on the case, &c. ; and whereupon the said G. P. by J. A. his attorney, complains : that whereas heretofore, to wit, on the eighth day of August, in the year of Our Lord 1791, at London aforesaid, to wit, in the parish of St. Mary-le-Bow, in the ward of Cheap, at the special instance and request of the said W. U. it was agreed, by and between the said plaintiff, by the description of Mr. G. P. owner of the good ship or vessel called the Friendship, of the burthen of three hundred and thirty tons, or thereabouts, then riding at anchor in the river Thames, and one John Osborne, otherwise called John Osborne, as the agent for and on behalf of the said W. U. that the said ship, being tight, staunch, and strong, and every way fitted for the voyage, should with all convenient speed sail and proceed to Narva, or so near thereto as she might safely get and there load, from the factors of the said John Osborne, about three hundred load of timber, twelve thousand deals, and complete the cargo with broken stowage of latwood, or a cargo of timber and deals with ditto, the ship to be addressed to the order of the said J. O. at Narva, but no commission to be charged not exceeding what she could reasonably stow and carry over and above her tackle, apparel, provision, and furniture, and being so loaded should therewith proceed to London or Hull, or so near thereto as she might safely get and deliver the same, on being paid freight for timber, eighteen shillings per load ; for deals, fifty-five shillings per hundred, British standard ;

standard; for latwood as for broken stowage, or fathom of four-foot latwood, the freight of a load of timber; and so in proportion; if more was given at that time by the said house, the said ship to receive the same freight, with two thirds port charges and pilotage, restraint of princes and rulers during the said voyage always excepted; one half of the freight to be paid on unloading and right delivery of the cargo, and the remainder in three months following; twenty running days were to be allowed the said merchant, if the ship was not sooner dispatched, for loading the said ship at Narva, and fifteen days for delivery at London or Hull, demorage three pounds per day, over and above the said laying days; penalty for non-performance of that agreement one thousand pounds; the deals to be taken by tale from the said ship, or by bill of lading, and not from the tale of any wharf they might be sent to: and the said agreement being so made as aforesaid, afterwards, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration thereof, and also in consideration that the said plaintiff, at the special instance and request of the said defendant, by the said John Osborne, had then and there undertaken, and faithfully promised the said defendant, to perform and fulfil all things in the said agreement contained, on his part and behalf to be performed and fulfilled, as such owner of the said ship or vessel, he the said defendant undertook, and to the said plaintiff then and there faithfully promised, to perform and fulfil all things in the said agreement contained, on his part and behalf to be performed and fulfilled, as such freighter thereof as aforesaid: And the said plaintiff in fact says, that in pursuance of the said agreement the said ship or vessel did, with all convenient speed, proceed and go to Narva, or as near thereto as she could safely get, and there loaded from the factors of the said J. O. a large cargo of timber and deals, with latwood for broken stowage, to wit, four hundred loads, two thousand deals, and thirty-two fathom of latwood for broken stowage, according to the form and effect of the said agreement: And the said plaintiff says, that after the loading of the said cargo in and on board the said ship or vessel, according to the said agreement, the said ship or vessel was ready to return and proceed with her cargo aforesaid from Narva aforesaid to London or Hull aforesaid, and there to deliver the same; but the said plaintiff says, that before the arrival of the said ship or vessel with her cargo at either of the aforesaid places, to wit, on the seventh day of October in the year aforesaid, the said defendant ordered and directed the said ship or vessel with her said cargo to proceed and go to Rochester, in lieu of London and Hull aforesaid, and as a performance of her said voyage and agreement on the part of the said plaintiff: And the said plaintiff says, that according to the aforesaid order and direction of the said defendant, the said ship or vessel did proceed to R. aforesaid, and there, above three months before the commencement of this suit, to wit, on the first day of December, in the year of Our Lord 1791, delivered her said cargo; whereof the said defendant afterwards, to wit, on the same day

ASSUMPSIT SPECIAL.—ON CHARTER-PARTY.

and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, had notice: And the said plaintiff further says, that more than the said freight, to wit, eighteen shillings and sixpence per load of timber, was *then, at the time of making the said agreement*, given by the said house, that is to say, to the captain or owner of the ship or vessel called the Theodosia, on a like voyage; by reason thereof, and of the said agreement, he the said plaintiff was entitled to the same, to wit, at London, &c.; by reason of which said premises a large sum of money, to wit, the sum of four hundred and thirty-two pounds eight shillings of lawful money of Great Britain, became, and was, and still is, due from the said defendant to the said plaintiff, for the said freight of the said cargo so laden on board the said ship or vessel as aforesaid; and a further sum of money, to wit, the sum of forty-eight pounds of like lawful money, for divers, to wit, sixteen days demorage, whereon the said defendant kept the said ship or vessel on demorage, and more than the said laying days in the said agreement mentioned, by reason whereof became, and was, and still is, due from the said defendant to the said plaintiff, according to the form and effect of the said agreement; and a further sum of money, to wit, the sum of seventeen pounds seven shillings and tenpence of like lawful money became, and was, and still is, due from the said defendant to the said plaintiff, for two-thirds port charges and pilotage of the said ship or vessel in the said voyage, to wit, at London, &c.; of all which premises the said defendant afterwards, to wit, on the same day and year last aforesaid, there had notice, and by reason thereof then and there became liable to pay the same several sums of money to the said plaintiff, according to the form and effect of the said agreement, and of the said promise and undertaking so made as aforesaid. (2d Count same as the first, only leaving out what is in Italic.) And whereas also, before the making of the promise and undertaking hereinafter next mentioned, the said plaintiff had let and chartered to the said defendant, a certain other ship or vessel of the said plaintiff, on a certain other voyage from London aforesaid to parts beyond the seas, to wit, to Narva aforesaid, or so near thereto as she might safely get, and thence back again to London or Hull, to wit, at London, &c.; and the said John Osborne had then and there hired the said ship or vessel of the said plaintiff for the said voyage accordingly: and thereupon afterwards, to wit, on the seventh day of October, in the year of Our Lord 1791, at London, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, would permit and suffer the said ship or vessel to go and proceed to Rochester, instead of London or Hull aforesaid, the said defendant undertook, and to the said plaintiff then and there faithfully promised, to pay the expence of ballasting the said ship or vessel at Rochester aforesaid: And the said plaintiff saith, that he, confiding in the said promise and undertaking of the said defendant, did permit and suffer the said ship or vessel to go and proceed to Rochester aforesaid, instead of London or Hull aforesaid, and the said

said ship or vessel went to Rochester accordingly; and that by reason thereof the expence of ballasting the said ship or vessel there amounted to a large sum of money, to wit, the sum of twenty pounds, of like lawful money, to wit, at London aforesaid, &c.; of all which said premises the said defendant afterwards, to wit, on the first day of December, in the year last aforesaid, there had notice. (4th Count, for the use, freight, and hire of ships; 5th, *Quantum meruit*; 6th, for work and labour; 7th, *Quantum meruit*; 8th, money paid; 9th, had and received; 10th, account stated; and common conclusion).

OPINION. I Have perused the declaration in this case, and on consideration of the circumstances of the defence am of opinion, that they may be given in evidence on the general issue of *non assumpsit*.

If there is no custom of the place where the loading was taken in to regulate the question of demorage, it seems to me a difficult matter to determine it from the nature of the contract between the parties; but thus much seems in favour of the defendant; the delay was occasioned by stormy weather, termed in law the act of God; therefore such as the defendant could not prevent; he had a cargo on shore ready to deliver if the plaintiffs could have taken it. The plaintiff's captain and crew were retained upon this particular duty only, and were pro-

vided with every necessary means, such as boats, &c. for the purpose of loading, and had nothing else to attend to, the accident being inevitable; if the plaintiffs actually loaded the vessel after the abatement of the storm, it is strong evidence of their liability in the first instance; and if we look at their declaration, they have averred (and therefore ought to prove), that the defendant kept the ship on demorage, which the evidence contradicts, for the delay was inevitable. But this case is of too nice a nature for me to speak decisively upon, especially as I can meet with nothing like an authority one way or other; therefore would recommend the advice of some Gentlemen of more experience than myself to be taken upon it.

T. BARROW.

MIDDLESEX; to wit. Archibald Hormar complains of Alexander Benson, being, &c.: for that whereas the said Alexander, before and at the time of making his promise and undertaking hereafter next mentioned, was, and from thence hitherto hath been, and still is, a livery-stable-keeper, and the business of a livery-stable-keeper hath for and during all that time used, exercised, followed, and carried on, and still doth use, exercise, follow, and carry on, to wit, at, &c. aforesaid: And whereas the said Alexander so being a livery-stable-keeper, and so using, exercising, following, and carrying on his said business at his said stables as aforesaid, heretofore, to wit, on the third day of November A. D. 1789, at, &c. aforesaid, in consideration that the said Archibald, at the special instance and request of the said Alexander, would put to livery with the said Alexander a certain gelding of the said Archibald of a large price, to wit, of the price of thirty pounds of lawful, &c. to be kept, fed, and taken care of by the said Alexander for the said Archibald, for a certain reward to be therefore paid by the said Archibald to the said Alexander, he the said Alexander and his servants should and would from time to time, and at all times thereafter, when and so often as they should be thereunto required by the said Archibald, whilst the said gelding should continue at livery with the said Alexander,

Special *assumpsit* in consideration that plaintiff would put his horse at livery with defendant, he undertook to deliver it whenever plaintiff should want it.

ASSUMPSIT SPECIAL.—ON ARTICLED CLERKS,

deliver the said gelding to him the said Archibald: And the said Archibald avers, that he, confiding in the said promise and undertaking of the said Alexander, so by him made in manner and form aforesaid, did afterwards, to wit, on, &c. at, &c. aforesaid, put the said gelding of him the said Archibald to livery with him the said Alexander, for the purpose aforesaid; and although he the said Archibald did afterwards, and whilst the said gelding continued at livery with the said Alexander, to wit, on the nineteenth day of November in the year aforesaid, require a certain then servant of the said Alexander to deliver the said gelding to him the said Archibald, to wit, at, &c. aforesaid: Yet the said Alexander, contriving and fraudulently and unjustly intending to injure the said Archibald, did not nor would perform his said promise and undertaking, so by him made in manner and form aforesaid, but thereby craftily and subtilly deceived the said Archibald in this, to wit, that the said servant of the said Alexander did not, nor would, at the said time when he was so required as aforesaid, deliver the said gelding to him the said Alexander, but wholly refused and neglected so to do, whereby the said Archibald was hindered and prevented from riding and using his said gelding in and about his necessary affairs and business, to wit, at the parish aforesaid, in the county aforesaid. And whereas (as before), that he the said Alexander would deliver, &c. (omitting servants) when he the said Alexander was requested: Yet the said Alexander, not regarding, &c. did not nor would deliver, whereby, &c. (as before).

Drawn by MR. TIDD.

2d Count.

30. Geo. 3.

This cause was tried before Lord Kenyon at the sittings after Michaelmas Term, when his Lordship told the jury, the least they could do would be to give

the plaintiff 20l. damages; and reprimanded the insolent conduct of the defendant.

Declaration in special *assumpsit* for the penalty in an agreement to place defendant's son with plaintiff, an attorney, as an articulated clerk, for not paying the fee.
2d Count for the fee, omitting the agreement.

LONDON, to wit. Sarah Kennett was attached to answer William Greenwollers in a plea of trespass on the case; and thereupon the said William, by William Bennett, his attorney, complains: that whereas heretofore, to wit, on the thirty-first day of May, in the year of Our Lord 1793, at London, to wit, in the parish of St. Mary le-Bow, in the ward of Cheap, it was agreed by and between the said William (he the said William then being one of the attorneys of the court of our lord the now king, before the king himself) and the said Sarah in manner and form following (that is to say), the said William did then and there undertake to accept as an articulated clerk, Robert Hennett, son of the said Sarah, for the term of five years, and to provide him during that period with proper meat, drink, and lodging; in consideration whereof the said Sarah did then and there undertake to pay to the said William the sum of one hundred and fifty pounds, as a clerk's fee with the said R. H. and to place him forthwith with the said William; and the said William and Sarah did then and there undertake, each to the other of them, that proper articles

cles of clerkship should in one week's time then next following be drawn and executed, and that the party making default should forfeit to the other the sum of twenty pounds; and the said agreement being so made as aforesaid, afterwards, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration of the premises, and also in consideration that the said William, at the special instance and request of the said Sarah, had undertaken, &c. (mutual promises): And the said William avers, that he, confiding in the said agreement, was ready and willing to accept the said Robert Hennett as an articulated clerk for the said term of five years, and to provide him during that period with proper meat, drink, and lodging, to wit, at London aforesaid, in the parish and ward aforesaid; whereof the said Sarah there had notice; and although the said William hath always, from the time of making the said agreement, hitherto well and truly performed and fulfilled the same in all things therein contained on his part and behalf to be performed and fulfilled, to wit, at London aforesaid, in the parish and ward aforesaid: Yet the said Sarah, not regarding the said agreement, nor her said promise and undertaking so by her made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said William in this behalf, hath not paid to him the said William the said sum of one hundred and fifty pounds as a clerk's fee with the said Robert Hennett, or the said sum of twenty pounds so agreed to be forfeited as aforesaid, or any part thereof, although often requested so to do; but she to do this hath hitherto wholly refused, and still refuses. And whereas heretofore, to wit, on the thirty-first day of May in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said William, at the like special instance and request of the said Sarah, had undertaken, and then and there faithfully promised the said Sarah, to accept the said Robert H, the son of the said Sarah, as an articulated clerk for the term of five years, and to provide him during that period with proper meat, drink, and lodging, she the said Sarah undertook, and then and there faithfully promised the said William, to pay to him the sum of one hundred and fifty pounds as a clerk's fee with the said Robert Hennett; and although the said William was then and there ready and willing to accept the said Robert Hennett as an articulated clerk for the said term of five years, and to provide him during that period with proper meat, drink, and lodging, to wit, at London aforesaid, in the parish and ward aforesaid; whereof the said Sarah there had notice; Yet the said Sarah, not regarding her said last-mentioned promise and undertaking so by her made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said William in this behalf, hath not as yet paid to him the said William the said last-mentioned sum of one hundred and fifty pounds as a clerk's fee with the said Robert Hennett, or any part thereof, although often requested so to do;

ASSUMPSIT SPECIAL.—ON ARTICLED CLERKS, &c.

but she to do this hath hitherto wholly refused, and still refuses so to do: (3d Count, work and labour, drawing deeds, &c.; 4th Count, *Quantum meruit* thereto; 5th Count, for meat, drink, &c. found and provided; 6th Count, *Quantum meruit* thereto; 7th Count, money paid; 8th Count, money had and received; 9th Count, account stated; and common conclusion).

Drawn by MR. TIDD.

Special demur-
rer to 1st Count
of declaration in
assumpsit on a
—*breve*ment.

And the said Sarah, by Benjamin Comberbach her attorney, comes and defends the wrong and injury, when, &c.; and as to the first Count of the said declaration she the said Sarah says, that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said William to have or maintain his aforesaid action thereof against the said Sarah, to which said first Count and the matters therein contained, in manner and form as the same are above pleaded and set forth, she the said Sarah is not under any necessity, nor in any ways bound by the law of the land, to answer; and this she is ready to verify: wherefore, for want of a sufficient first Count to the said declaration in this behalf, the said Sarah prays judgment as to the said first Count if the said William ought to have his aforesaid action thereof maintained against her, &c.: And for causes of demurrer in law as to the said first Count of the said declaration, according to the form of the statute in such case made and provided, the said Sarah assigns and shews to the Court here the causes following, to wit: For that the said William hath not in or by his said first Count of his said declaration stated, averred, or shewn, nor does it therein or thereby appear that he the said William did execute, or was ready and willing, or tendered and offered to execute proper articles of clerkship in one week's time next following the making of the said agreement in the said first Count of the said declaration mentioned; and for that it does not appear in or by the said first Count of the said declaration that any articles of clerkship were ever drawn and executed by the said William according to the tenor and effect of the said agreement; and also, for that it is not stated in the said first Count that the said Sarah made any default in executing the said articles in the said agreement mentioned; and also, for that the said William hath not, in or by the said first Count of his said declaration, averred or shewn that he the said William, at any time before the commencement of the said suit, made any special request of the said Sarah for payment of the said sum of one hundred and fifty pounds, or the said sum of twenty pounds, in the said first Count of the said declaration mentioned, and thereby supposed to be due and payable to the said William; and for that the said William hath not sufficiently or clearly or explicitly stated in or by his said first Count that the said Sarah forfeited or became liable to pay the said William the said sum of twenty pounds in the said agreement mentioned, and

agreed

agreed to be forfeited by the party making default in performing the same, or shewn a sufficient breach thereof from whence such forfeiture may appear; and for that the said first Count is in other respects uncertain, insufficient, and informal: And as to the said second Count of the said declaration, and also as to all the promises and undertakings in the third, fourth, fifth, sixth, seventh, eighth, and ninth Counts of the said declaration mentioned, except as to one pound eleven shillings and sixpence, parcel of the said several sums of money therein contained, she the said Sarah says, that she did not undertake or promise in manner and form as the said William hath above thereof complained against her; and of this she puts herself upon the country, &c.; and as to the said sum of one pound eleven shillings and sixpence, parcel, &c. she the said Sarah says, that the said William ought not to have or maintain his aforesaid action against her to recover any more or greater damages than one pound eleven shillings and sixpence in this behalf; because she says, that after the making of the said several promises and undertakings in the said third, fourth, fifth, sixth, seventh, eighth, and ninth Counts of the said declaration mentioned as to said sum of one pound eleven shillings and sixpence, parcel, &c. and before the commencement of this suit, to wit, on the day of in the year of Our Lord 179, she the said Sarah tendered and offered to pay to the said William the said sum of one pound eleven shillings and sixpence, parcel, &c. to receive which of the said Sarah he the said William then and there wholly refused: And the said Sarah further saith, that she the said Sarah, from the time of the making of the said several promises and undertakings in the said third, fourth, fifth, sixth, seventh, eighth, and ninth Counts in the said declaration mentioned, as to the said sum of one pound eleven shillings and sixpence, parcel, &c. always hitherto hath been and still is ready to pay to the said William the said sum of one pound eleven shillings and sixpence, and now brings the same into court here ready to be paid to the said William, if he the said William will accept the same; and this she the said Sarah is ready to verify: wherefore she prays judgment if the said William ought to have or maintain his aforesaid action against her the said Sarah, to recover any more or greater damages than one pound eleven shillings and sixpence in this behalf.

THO. BARROW.

LONDON, *ff.* Margaret Elderton, administratrix of all and singular the goods and chattels, rights and credits, which were of Benjamin Cleeve deceased, at the time of his death, unadministered by Maria Cleeve deceased, who in her lifetime, and at the time of her death, was executrix of the last will and testament of the said Benjamin Cleeve deceased, with the will of the said Benjamin Cleeve annexed, complains of John Biggin, being, &c.: for that whereas, on the thirty-first day of May A. D. 1749, Declaration at suit of an administrator *de bonis non*, on a special promise to return insurance money, if restitution should be made by the Spaniards who Wit, had taken the ship.

ASSUMPSIT SPECIAL.—TO REPAY MONEY.

wit, at L. aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap, in consideration that the said B. Cleeve in his lifetime, at the special instance and request of the said John, had paid to him the said John ninety-eight pounds for one hundred pounds insurance on a certain ship called the Mary, Thomas Nesbitt master, from Port Royal in Jamaica to London, which ship was taken by the Spaniards and carried into the Havannah, and condemned some time after the cessation of arms, to wit, between Great Britain and Spain, which kingdoms had then lately been at war; and as there was the greatest reason to imagine that satisfaction would be made by the Spaniards for the said ship, cargo, and freight, as the said John then and there alledged, he the said John then and there, to wit, on the day and year aforesaid, at London, &c. &c. aforesaid, undertook, and faithfully promised the said B. Cleeve in his lifetime, that he the said John would use his utmost endeavours in soliciting restitution for the same, and to repay to the said B. Cleeve, or his order, his the said B. Cleeve's proportion of what might be recovered thereon (necessary expences being first allowed): And the said Margaret, administratrix in form aforesaid, in fact further saith, that the said John did afterwards, *to wit, in the lifetime of the said B. Cleeve, that is to say, on first of January A. D. 1761, at London, &c. aforesaid,* recover restitution for the said ship, cargo, and freight; and that the said Benjamin Cleeve's proportion of what was recovered thereon (necessary expences being first allowed) amounted unto a large sum of money, to wit, unto the sum of ninety-seven pounds; by means whereof the said John, according to the tenor of his promise and undertaking aforesaid, became liable to pay, and ought to have paid, to the said Benjamin in his lifetime, a large sum of money, to wit, the sum of ninety-seven pounds, that is to say, at London, &c. aforesaid; of all which premises the said John afterwards, to wit, on the day and year last mentioned, there had notice. And whereas the said John afterwards, in the lifetime of the said Benjamin Cleeve, to wit, on, &c. at, &c. was indebted to the said Benjamin Cleeve in one hundred pounds of lawful, &c. for, &c. (money had and received, lent and advanced, and laid out, expended, and paid for the said John; *assumpsit* accordingly): Yet the said John, not regarding his aforesaid several promises and undertakings so by him made in this behalf as aforesaid, but contriving, &c. to deceive, &c. the said Benjamin Cleeve in his lifetime, and the said Maria, executrix as aforesaid, since his death, and the said Margaret, administratrix as aforesaid, since the respective deaths of the said Benjamin and Maria, in this behalf (to which said Margaret administration of all and singular the goods and chattels, rights and credits, which were of the said Benjamin at the time of his death unadministered by the said Maria Cleeve, executrix as aforesaid, with the will of the said Benjamin annexed, was, by Thomas by Divine Providence archbishop of Canterbury, primate of all England, and metropolitan, on the twenty-sixth day of June A. D. 1766, to wit, at L. &c. aforesaid,

2d Count.

aforesaid, in due form of law committed), hath not as yet paid the said several sums of money, or any part thereof, either to the said Benjamin in his lifetime, or to the said Maria, executrix as aforesaid, since his death, or to the said Margaret, administratrix as aforesaid, since the respective deaths of the said Benjamin and Maria, or to either of them (although to do this the said John was requested by the said Benjamin in his lifetime oftentimes, and by the said Maria, executrix as aforesaid, in her lifetime, after the death of the said Benjamin, oftentimes, and by the said Margaret, administratrix as aforesaid, since the respective deaths of the said Benjamin and Maria, to wit, on the twenty-first day of July A. D. 1776 aforesaid, and often afterwards, to wit, at L. &c. aforesaid); but he to do this hath hitherto wholly refused, and still refuses, to pay the same, or any part thereof, to the said Margaret, administratrix as aforesaid. (3d Count like the 1st, only stating the recovery of restitution to be *afterwards, that is to say, after the death of the said Benjamin, and in the lifetime of the said Maria, executrix of the said Benjamin, to wit, on, &c. at, &c.* Add a conclusion to this Count. 4th Count like the 1st, only stating the recovery of restitution to be *afterwards, to wit, after the death of the said Benjamin and Maria, executrix as aforesaid, that is to say, in the lifetime of the said Margaret, administratrix as aforesaid, to wit, on, &c. at, &c. aforesaid.* 5th Count, money had and received to the use of the said Margaret, administratrix as aforesaid): Yet the said John, not regarding, &c. (common conclusion to the two last Counts; damages two hundred pounds; suit, &c.) And the said Margaret, administratrix in form aforesaid, brings into court here the letters of administration of the said archbishop (with the will of the said Benjamin annexed), which letters of administration sufficiently testify to the Court here the granting of the administration as aforesaid in form aforesaid to the said Margaret, the date whereof is the day and year in that behalf above mentioned. (Pledges, &c.)

SURRY, to wit. Michael Salmon was attached to answer Declaration in John Soams, esquire, treasurer to the guardians of the poor of the C. B. at suit of the parish of Streatham, in the county of Surry, in a plea of trespass the treasurer to the guardians of the poor against a surveyor, on a contract to design a plan for a workhouse erected by act of parliament, superintend the building, inspect the workmen's bills, &c.; breach for allowing workmen more than he ought, Michael &c. &c.

on the case; and whereupon the said John, by Thomas Burton his attorney, complains: for that whereas, before the making of the agreement, and of the promises and undertakings hereafter mentioned, the said John was, and from thenceforth hitherto hath been, and still is, treasurer to the guardians of the poor of the parish of S. in the county of S. duly appointed by virtue of an act of parliament made at the session of parliament of our lord the king held at Westminster in the thirtieth year of his present majesty's reign, intitled, "An Act for providing a Workhouse for, and for the better Relief and Employment of the Poor of the Parish of S. in the County of S. and for appointing an additional Overseer for the better Government of the Poor of the said Parish." And the said

Michael during all the time aforesaid was the surveyor of the works to the said guardians of the poor of the parish of S. in the county of S. to wit, at the parish of S. aforesaid, in the said county of Surry: and the said John and Michael respectively being and continuing such treasurer and surveyor as aforesaid, heretofore, to wit, on the fifth of July A. D. 1790, at the parish aforesaid, in the county aforesaid, it was proposed and resolved upon by and amongst the guardians of the poor of the said parish for the time being, by virtue of the said act to erect, build, provide, and furnish a certain erection and building called a workhouse, for the use of the poor of the said parish, for the well-governing and managing of the poor thereof: and thereupon, at the special instance and request of the said Michael, it was agreed between the said guardians of the poor of the said parish for the time being and the said M. that he the said M. as such surveyor as aforesaid, should and would then and there, for a reasonable reward to be therefore paid him, make and prepare a design, plan, and elevation of the said intended building, and superintend the erecting, building, and finishing the same, and should and would, as such surveyor as aforesaid, honestly, faithfully, and accurately survey and make a true and faithful certificate of all the work to be from time to time done by the different artificers, workmen, and labourers in and about the building and completing the said workhouse, and should and would from time to time, when and as often as payment should be called for by the artificers and workmen to be from time to time employed in and about the said intended building for and on account of work and labour done, and materials found and provided in respect thereof, well and faithfully inspect the several bills, accounts, and charges of the said several artificers and workmen, and well and truly state, certify, and shew to the said guardians of the poor of the said parish for the said time being, how much ought to have been allowed for the same, preparatory to the payment thereof: and the said agreement being so made as aforesaid, afterwards, to wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid (mutual promises): And the said John in fact says, that although the said guardians of the poor of the said parish for the time being, confiding in the said promises and undertaking of the said M. did, in pursuance of the said agreement, employ the said M. upon the terms therein expressed, and in the execution thereof as such surveyor as aforesaid; and although the said M. did, in pursuance of the said agreement, make a certain design, plan, and elevation of the said intended building, which was afterwards approved of by the guardians of the poor of the said parish of S. for the time being; and although certain artificers, workmen, and labourers were accordingly employed to erect, build, and finish the said intended building, pursuant to the said design, plan, and elevation of the said Michael, and did accordingly proceed, build, and finish the same, under the inspection and direction of the said M. as such surveyor as aforesaid; and although after the said artificers, workmen, and labourers had done and

and performed their work and labour in and about the erecting, building, and finishing the said building, the said M. as such surveyor as aforesaid, did survey and measure the work so done by the said artificers, workmen, and labourers respectively in and about the said building, preparatory to the payment of their respective bills; and although the said guardians of the poor of the said parish for the time being have always, from the time of making the said agreement, hitherto done and performed, and been ready and willing to do and perform, all things in the said agreement contained on their part and behalf to be performed and fulfilled, according to the true intent and meaning of the said agreement, to wit, at the parish aforesaid in the county aforesaid: Yet the said M. not regarding the said agreement, nor his said promise and undertaking in that behalf made as aforesaid, nor his duty as such surveyor as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said guardians of the poor of the said parish for the time being, did not honestly, faithfully, and accurately survey and measure the said work of the said several artificers, workmen, and labourers so employed in and about the erecting, building, and finishing the building as aforesaid; but on the contrary thereof was dishonest, unfaithful, and inaccurate in the survey and admeasurement so by him the said M. made of the said work as aforesaid, and made a dishonest and false certificate of a great part, to wit, of the bricklayer's, carpenter's, glazier's, plaisterer's, and joiner's work, done in and about the said building, to the said guardians of the poor of the said parish, to wit, at the parish of S. aforesaid in the county aforesaid; by reason of which said false and inaccurate survey, admeasurement, and certificate of the said M. of the said work, the said guardians of the poor of the said parish for the time being, relying on the truth and accuracy thereof, and on the honesty and integrity of the said M. in the premises, not only have been induced to pay divers large sums of money, amounting in the whole to a large sum of money, to wit, to the sum of five hundred pounds of lawful money of Great Britain, in their own wrong, to several of the said artificers, workmen, and labourers, so employed in and about the said building, in discharge of their several bills, over and above the work done by them, and to a greater amount than they were entitled to receive for the same, but the said guardians of the poor of the said parish were, on occasion of the said premises, forced and obliged to lay out and expend divers other large sums of money, amounting in the whole to the sum of other five hundred pounds, as well in procuring the said building to be resurveyed and remeasured by other and different surveyors, in order to ascertain the true measure and value of the same, and the amount of the money overpaid on account thereof by the means aforesaid, as also in bringing and prosecuting divers actions at law for the recovery thereof, to wit, at the parish aforesaid in the county aforesaid. And whereas (2d Count, and promise to the guardians on agree-
2d Count, on a promise to the guardians of the poor, at the request of defendant, to permit and suffer him to survey, &c. preparatory to payment of the bills.

ment

3d Count.

ment to survey and admeasure certain brick-work, plaisterer's work, &c. &c. as in 1st Count.) And whereas the said guardians of the poor had appointed the said M. &c. promised them to render a just and true account and certificate of all the work, and survey preparatory to the payment of the bills (on a promise likewise to the guardians of the poor. One breach to both these Counts like the first; Counts for money had and received to the use of plaintiff, as treasurer, &c.; account stated; and common conclusion.)

THO. BARROW.

Declaration at the suit of an administrator (to whom administration was granted, as the attorney of the next of kin residing out of the kingdom), against defendant, who had given the intestate promissory notes to pay 100 guineas when he should be worth 5000l. in consideration of five guineas in hand; and in consideration of other five guineas in hand, to pay fifty guineas when he should be married; averring both events to have happened in the testator's lifetime.

LONDON, ff. John Way, esquire, administrator of all and singular the goods, chattels, rights, and credits which were of David Scott, esquire, at the time of his death, who died intestate, for the use and benefit of John Hay, esquire, the nephew and one of the next of kin of the said David Scott, esquire, deceased, complains of Colin Machenzee, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea of trespass on the case, &c.: for that whereas, in the lifetime of the said David Scott, to wit, on the thirty-first day of January in the year of Our Lord 1776, at London, in the parish of St. Mary-le-Bow in the ward of Cheap, in consideration that the said David Scott, at the special instance and request of the said Colin, had then and there paid to the said Colin the sum of five guineas, he the said Colin undertook, and then and there faithfully promised the said David Scott, to pay to him the said David Scott one hundred guineas, when he the said Colin should become possessed of five thousand pounds: And the said John avers, that afterwards, to wit, on the twentieth day of April in the year of Our Lord 1785, at London aforesaid, in the parish and ward aforesaid, the said David died; and that afterwards, to wit, on the sixth day of May in the year last aforesaid, administration of all and singular the goods and chattels, rights and credits, which were of the said David at the time of his death, who died intestate, was granted to the said John as the lawful attorney of the said John Hay, the nephew and one of the next of kin to the said David, by John, by Divine Providence archbishop of Canterbury, primate of all England, and metropolitan; of all which premises the said Colin afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice: And the said John Way further says, that afterwards, to wit, on the first day of January in the year of Our Lord 1789, at London aforesaid, in the parish and ward aforesaid, the said John became possessed of five thousand pounds; by reason whereof the said Colin then and there became liable to pay, and ought to have paid, to the said John Way, as such administrator as aforesaid, the said sum of one hundred guineas, to wit, at London aforesaid in the parish and ward aforesaid: And whereas also in the lifetime of the said David Scott, to wit, on the thirty-first day of January in the year of Our Lord 1776, at London aforesaid, in the parish and ward aforesaid; in consideration

sideration that the said David Scott, at the special instance and request of the said Colin, had paid to the said Colin, who was then and there sole and unmarried, the sum of five guineas, he the said Colin undertook, and then and there faithfully promised the said David, to pay to him the said David or order fifty guineas upon the day of the marriage of him the said Colin: And the said John avers, that afterwards, to wit, on the twentieth day of April in the year of Our Lord 1785, at London aforesaid, in the parish and ward aforesaid, the said David died; and that afterwards, to wit, on the sixth day of May in the year last aforesaid, administration of all and singular the goods and chattels, rights and credits, which were of the said David at the time of his death, who died intestate, was in form aforesaid granted to the said John Way; of all which last-mentioned premises the said Colin afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice: And the said John Way further says, that afterwards, to wit, on the nineteenth day of September in the year of Our Lord 1785, at London aforesaid, in the parish and ward aforesaid, the said Colin did marry and take to his wife one Janet Spratt, spinster; by reason whereof the said Colin thereupon became liable to pay, and then and there ought to have paid, to the said John Way, as such administrator as aforesaid, the said sum of fifty guineas, to wit, at London aforesaid, in the parish and ward aforesaid: Yet the said Colin, not regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said John Way, as administrator as aforesaid, in this respect, hath not yet paid the said several sums of money, or either of them, or any part thereof, to the said John Way (although so do he the said Colin was requested by the said John Way afterwards, to wit, on the same day and year last aforesaid, and often afterwards, at London aforesaid, in the parish and ward aforesaid); but he to pay the same hath hitherto wholly refused, and still doth refuse. (Add Counts for money lent and advanced; laid out, expended, and paid; money had and received; account stated: Yet the said Colin, not regarding his four last-mentioned promises and undertakings in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said David in his lifetime, and the said John, to whom, as the lawful attorney of the said John Hay the nephew, and one of the next of kin of the said David Scott, administration of all and singular the goods and chattels, rights and credits, which were of the said David Scott deceased, for the use and benefit of the said John Hay his nephew, and one of the next of kin as aforesaid, by John, by Divine Providence archbishop of Canterbury, primate of all England, and metropolitan, on the eighth day of May in the year of Our Lord 1785, at London aforesaid, in the parish and ward aforesaid, was in due form of law committed, since the decease of the

* Day of Marriage, &c.

ASSUMPSIT SPECIAL.—NEGLIGENCE.

saïd David, hath not yet paid the saïd four last-mentioned sums of money, or any or either of them, or any part thereof, to the saïd David in his lifetime, or to the saïd John long since his death (although to pay the same he the saïd Colin was requested by the saïd David in his lifetime oftentimes by the saïd John, after the decease of the saïd David, to wit, on the first day of January in the year of Our Lord 1786, and oftentimes since, to wit, at London aforesaid, in the parish and ward aforesaid); but he to pay the same, or any part thereof, hath hitherto wholly refused, and to pay the same to the saïd John Way doth still refuse, to the saïd John Way, as such administrator as aforesaid, his damage of three hundred pounds; and therefore he brings suit, &c; and he also brings into court here, &c.

W. RUSSELL.

Special assumpsit against a master of a ship, for not proceeding to sail to take a load of cod-fish to Scotland, whereby the fish became putrid.

G. S. H. C. T. E. and E. B. complain of E. B. being, &c. for this, to wit: that whereas the saïd G. S. &c. before the making of the promise and undertaking of the saïd E. B. hereafter next mentioned, had bought of one J. B. of Aberdeen, in that part of Great Britain called Scotland, a certain large quantity of cod-fish, of a large value, to be cured by the saïd J. B. at Fraserburgh in Scotland, and to be there delivered by the saïd J. B. to the saïd G. S. &c. or to their order: And whereas the saïd E. B. before and at the time of the making of his promise and undertaking hereafter next mentioned, was master of a certain ship or vessel called the *Countess of Sutherland*, which was then in the river of Thames in the port of London, to wit, at L. aforesaid, &c.: and thereupon it was then and there, to wit, on, &c. at, &c. agreed between the saïd G. S. &c. and the saïd E. B. that the saïd E. B. should sail immediately and proceed with his saïd ship to F. aforesaid, and that the saïd plaintiff should put on board his saïd ship, upon her arrival at F. aforesaid, three hundred barrels of the saïd cod-fish, and should pay him therefore the sum of three shillings for each and every of the saïd three hundred barrels, for the freight thereof; and that if, on the arrival of the saïd ship at F. aforesaid, the saïd defendant should find there a greater quantity of the saïd cod-fish prepared than the saïd three hundred barrels, then he the saïd E. B. might take and load on board his saïd ship any greater number of barrels of the saïd cod-fish which he chose, at and for the same freight, to be paid therefore to the saïd E. B. by the saïd G. S. &c.; and that the saïd E. B. for such freight as aforesaid, should bring and convey in his saïd ship the saïd cod-fish so to be loaden on board his saïd ship as aforesaid, from F. aforesaid to the port of L. aforesaid, and there, to wit, at the port of L. aforesaid, should deliver the same to the saïd G. S. (the perils and dangers of the sea only excepted); and the saïd agreement being so made as aforesaid (mutual promises): And the saïd G. S. &c. in fact say, that the saïd E. B. did not sail immediately after the making of the saïd agreement, and proceed with his saïd ship to F. aforesaid, as he might and ought to have done; but on the contrary thereof

thereof neglected to PROCEED with the said ship to F. aforesaid; for a long and unreasonable time, to wit, for the space of six weeks next after the making of the said agreement, and of the said promise and undertaking of the said E. B. so by him in that behalf made as aforesaid; and although the said E. B. did, after such long and unreasonable time, sail to F. aforesaid, and take on board the said ship the said three hundred barrels of the said cod-fish, and convey and bring the same to the port of L. aforesaid, yet, by reason of the delay and neglect aforesaid of the said E. B. all the said cod-fish became and were putrid, rotten, unwholesome, and not marketable, and of no value to the said G. S. &c. which otherwise would have been sound, sweet, wholesome, and of great value, to wit, of the value of six hundred pounds, that is to say, at L. aforesaid, &c. (2d Count, like the first, omitting what is in Italic: 3d Count, that plaintiffs had bought cod-fish; and that defendant was master of a ship, as in 2d Count; then as follows:)

And whereas the said G. S. &c. having bought the said cod-fish as aforesaid, and being desirous of conveying the same from F. aforesaid to L. aforesaid, afterwards, to wit, on, &c. at, &c. aforesaid, at the special instance and request of the said E. B. so being master of the said last-mentioned ship or vessel; retained and employed him the said E. B. for that purpose: and thereupon, in consideration thereof, and also in consideration of certain freight to be therefore paid by the said G. S. &c. to the said E. B. he the said E. B. then and there undertook, &c. to set sail and proceed with the said ship or vessel, without loading the same, from the port of L. aforesaid to F. aforesaid, and then, to wit, at F. aforesaid, to take on board of the said last-mentioned ship or vessel, without delay, on her arrival there, a certain cargo, consisting of divers, to wit, three hundred barrels of the said last-mentioned cod-fish; and to convey the said cargo in the said ship or vessel from F. aforesaid to the port of L. aforesaid, and then, to wit, at the port of L. aforesaid, to deliver the same to the said G. S. &c. to wit, at L. aforesaid, &c. Yet the said E. B. not regarding, &c. did not proceed with the said ship or vessel without loading the same from the port of L. aforesaid to F. aforesaid, nor there, to wit, at F. aforesaid, take on board the said ship or vessel without delay, on her arrival there, the said cargo of the said last-mentioned cod-fish, or any part thereof (although the said cargo was ready to be delivered to the said E. B. on his arrival at F. aforesaid); but on the contrary thereof, he the said E. B. after the making of his said last-mentioned promise and undertaking, did, at the port of L. aforesaid, load the said ship or vessel, and did afterwards set sail and proceed with the said ship or vessel so loaded for the port of L. aforesaid to Invernets in S. aforesaid, and there, to wit, at I. aforesaid, unloaded the said ship or vessel before he proceeded to take and took on board thereof the said cargo of the said last-mentioned cod-fish at F. aforesaid, so that, although he the said E. B. did afterwards, to wit, on the thirty-first March in the year aforesaid, take on board of the said ship or vessel, at

2d Count.

3d Count.

4th Count.

F. aforesaid, the said cargo of the said last-mentioned cod-fish, and did convey the same in the said ship or vessel from F. aforesaid to the port of L. aforesaid, and there, to wit, at the port of L. aforesaid, did deliver the same to the said G. S. &c. : Yet the said G. S. &c. in fact say, that by means of the delay occasioned by the loading and unloading of the said ship or vessel as aforesaid, the said cargo of the said last-mentioned cod-fish, which would otherwise have been sweet, wholesome, and marketable, and of a large value, to wit, of the value of six hundred pounds, became and was putrid, corrupt, rotten, unwholesome, and not marketable, and was thereby rendered of no value to the said G. S. &c. to wit, at L. aforesaid, &c. (4th Count, on a promise to set sail immediately, and proceed with the said last-mentioned ship or vessel from the port of L. aforesaid to F. aforesaid, and there, to wit, at F. aforesaid, to take on board of the said last-mentioned ship or vessel, &c. *prout*. Breach, that the said E. B. did not set sail immediately after the making of his said last-mentioned promise and undertaking, and proceed with the said last-mentioned ship or vessel from the port of L. aforesaid to F. aforesaid, nor there, to wit, at F. aforesaid, take on board of the said last-mentioned ship or vessel the said cargo of the said last-mentioned cod-fish; but on the contrary thereof, he the said E. B. after the making of the said last-mentioned promise and undertaking, for a long space of time, to wit, for the space of six weeks next after the making of that promise and undertaking, forbore and neglected to proceed with the said last-mentioned ship or vessel from the port of L. aforesaid to F. aforesaid, contrary to the form and effect of the said last-mentioned promise and undertaking made by him in that behalf as aforesaid, to wit, at L. aforesaid; and although he the said E. B. did afterwards, and after such neglect and delay to proceed as aforesaid, sail to and arrive at F. aforesaid, and there take on board of the said last-mentioned ship or vessel the said cargo of the said last-mentioned cod-fish, and did convey the same in the said last-mentioned ship or vessel from F. aforesaid to the port of L. aforesaid, and there, to wit, at the port of L. aforesaid, deliver the same to the said plaintiff, to wit, at L. aforesaid, &c. : Yet the said G. S. &c. in fact say, that by means of the said last-mentioned neglect and delay of the said E. B. as above mentioned, the said last-mentioned cargo of the said cod-fish, which otherwise would have been sweet, &c. became and was putrid, &c. to wit, at L. aforesaid, &c. Money laid out, had, and received; and common conclusion to those two-Counts.)

T. DAVENPORT.

Declaration

where one J. G. having put his

MIDDLESEX, ss. Joseph Hodgson, late of, &c. was attached to answer to Bleahcam in a plea of trespass on the horse to stand at livery at plaintiff's stables, let the horse stay so long that he was indebted to plaintiff in a large sum of money for keeping said horse; and said J. G. selling said horse to defendant, gave plaintiff orders to let defendant have the horse when he sent for him, and told plaintiff that defendant would pay what money was due for keeping said horse: defendant soon after sent a messenger for the horse and plaintiff a bill, and promised to pay plaintiff the money due if he would send said horse and his bill, but now refuses to pay plaintiff the debt, &c. (a).

(a) This is a good consideration, Hutt. 101.

case

case, &c.; and thereupon said B. by A. B. his attorney, complains: for that whereas he the said B. now keepeth, and for the space of one year and more now last past hath kept, as master thereof, certain stables, commonly called livery-stables, for stabling, feeding, and keeping for hire, of the horses of such persons as have, during that time, set up and put their horses respectively at livery with the said B. there, to wit, at W. in said county of M. aforesaid: And whereas, while he said B. so kept, as master thereof, the said stables for the purpose aforesaid, to wit, on the day of A. D. 1750, and from thence for a long time, to wit, until and upon twenty-first January A. D. 1750 aforesaid, at W. aforesaid, a certain horse of one J. G. was by said J. G. set up and put to livery with said B. in and at his said stables, and was, during all that time, there by the said B. at the instance and request of said G. stabled, kept, and fed for hire, whereby the said J. G. on the said twenty-first day of January in the year aforesaid, at W. aforesaid, was indebted to said B. in a large sum of money for the stabling, keeping, and feeding of the said horse, and for horse-meat, stabling, and attendance found and provided there by the said B. for the said horse, and in and about said feeding and keeping thereof; and said J. G. so being indebted as aforesaid, and said horse so being and continuing at and in the said stables of said B. at livery as aforesaid, he the said J. G. on same day and year last aforesaid, at W. aforesaid, ordered and directed the said B. to let the said J. H. have the said horse, and also a saddle and bridle, &c. which then belonged to said J. G. and came to the said stables with the said horse, whenever said J. H. should call for the said horse, and acquainted the said B. that the said J. H. would pay the said debt that was so due and owing from the said J. G. to said B. for the said horses standing at livery at said stables of the said B.: and thereupon the said J. H. afterwards, to wit, on same day and year last aforesaid, at W. aforesaid, sent to the said B. a certain messenger (to the said B. then unknown), for said horse, and then and there, in consideration that said A. B. at the special instance and request of the said J. H. would send the said horse by that messenger, and would also send the said B.'s bill of the said charges to the said J. H. he the said J. H. would pay the said bill: And the said B. in fact saith, that he the said B. giving credit to the said promise and undertaking of the said J. H. he the said B. sent the said horse, together with the said saddle and bridle, &c. belonging to the said J. G. by the said messenger to the said J. H. and then and there also sent his bill of the aforesaid charges to the said J. H. which said bill then and there amounted to pounds; of all which said premises the said J. H. then and there had notice: Yet, &c. (common conclusion for non payment of bill; *indebitatus assumpsit* and *quantum meruit* for horse-keeping, &c.; ditto for work and labour; common conclusion.)

Drawn by MR. WARREN.

Special *assumpsit* for not discharging plaintiff from action and imprisonment, after delivering up estate and effects.

LONDON, *ss.* Thomas Weston complains of George Ward, being, &c. in a plea of trespass on the case, &c.: for that whereas, at the time of the making of the promise and undertaking of the said defendant hereafter next mentioned, he the said plaintiff was in the prison of our lord the king, commonly called Wood-street Compter in the city of London, to wit, in the parish of St. Michael Wood street, in the ward of Cripplegate Within, to wit, upon an arrest under and by virtue of a certain other writ of our lord the king called a *latitat*, issuing out of the court of our lord the king, before the king himself (the said court then and still being held at Westminster in the county of M.), at the suit of the defendant, against him the said plaintiff and one Thomas Nesbitt, which writ was marked for bail for a large sum of money, to wit, the sum of two thousand seven hundred and thirty-seven pounds and upwards, as a debt claimed by and alleged by the said defendant to be due from him the said plaintiff and one Thomas Nesbitt, to him the said defendant: And whereas the said plaintiff, at the time of the making of the promise and undertaking of the said defendant hereafter next mentioned, was detained in custody in the prison aforesaid, at the suit of the said defendant, for want of bail to the said writ, to wit, at L. aforesaid, in the parish and ward aforesaid: And whereas the said plaintiff, at the time of the making of the promise and undertaking of the said defendant hereafter next mentioned, was possessed of certain other leasehold premises, to wit, of fourteen messuages or dwelling-houses, with a certain yard called the Orchard-House Yard, and a certain other messuage or dwelling-house situate in the said yard, with the appurtenances, situate in the parish of St. Dunstan in the county of Middlesex aforesaid, the said yard being adjoining to the river of Thames there, and the said yard, with the appurtenances, then being used by the said plaintiff as a timber-yard, and for the purpose of breaking up old ships and other vessels (which business he the said plaintiff then lately carried on at the said yard), with the appurtenances, (1) for a long term of years, whereof a great part is yet to come and unexpired, by virtue of an indenture of lease granted to the said plaintiff by one John Staples, and which lease had been by the said plaintiff before then assigned and delivered to the said defendant *upon certain trust, to wit, for the benefit of the said plaintiff*, and which lease was then in the possession of the said defendant, to wit, at L. aforesaid in the parish and ward aforesaid: And whereas the said plaintiff was, at the time of the making of the said promise and undertaking of the said defendant hereafter next mentioned, possessed of divers goods and chattels, stock in trade, household goods, furniture, and other things then being on the said yard called the Orchard-House Yard, and in the said messuage or dwelling-house in the said yard, with the appurtenances, and of divers books, papers, and vouchers, belonging to his business aforesaid, as of his own proper goods and chattels, to wit, at L. aforesaid, in the parish and ward aforesaid: And whereas the said plaintiff, being so possessed of the several and respective premises

(1) "the same premises having been demised to him said plain-
tiff"

as aforesaid, and so being in custody in the said prison at the suit of the said defendant, under and by virtue of the aforesaid writ for want of bail thereto as aforesaid, whilst he was so in custody for the cause aforesaid, and whilst he was so possessed of the several and respective premises aforesaid, in manner aforesaid, to wit, on the twentieth day of December in the year 1773 aforesaid, at L. aforesaid, in the parish and ward aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said George, would permit him the said defendant to retain the aforesaid indenture of lease as his own property, and the premises held under and by virtue thereof, for the residue of the term then to come therein and unexpired, and also would yield and deliver up the peaceable and quiet possession of the aforesaid leasehold premises, and all the said plaintiff's stock in trade, and all his effects on the said leasehold premises (his household furniture excepted), and also his books, papers, and vouchers, belonging to his said business, unto the said defendant, for him the said defendant to retain from thenceforth for ever, as his own estate and effects, goods and chattels, he the said defendant then and there undertook, and faithfully promised the said plaintiff, that he the said defendant would immediately afterwards give him the said plaintiff a full, free, and absolute discharge from the said defendant, claimed by the said George from the said plaintiff and Thomas N. and from which he the said plaintiff had been so arrested, and discharge him the said plaintiff from the said action, and from the said arrest, and from the imprisonment aforesaid under and by virtue thereof:

And the said plaintiff avers, that he, confiding in the said last-mentioned promise and undertaking of the said defendant, so by him made in the behalf as aforesaid, did afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, permit him the said plaintiff to retain the aforesaid indenture of lease as his own property, and all and singular the premises held under and by virtue thereof, for the residue of the term then to come therein and unexpired, and did also then and there, to wit, on the twenty-first day of December in the year aforesaid, at the said parish of St. Dunstan, Stepney, aforesaid, in the said county of Middlesex, yield and deliver up the peaceable and quiet possession of the aforesaid leasehold premises, and all his the said plaintiff's stock in trade, and all his effects on the said leasehold premises (his household furniture excepted), unto the said defendant, for him the said defendant to retain the same from thenceforth for ever as his own estate and effects, goods and chattels; and the said defendant did then and there accept thereof, and hath from thence hitherto retained the said lease and leasehold premises, stock in trade, effects, goods, and chattels, as his own estate and effects, goods and chattels, to wit, at L. aforesaid, in the parish and ward aforesaid: And the said Thomas Weston further saith, that he did afterwards, to wit, on the (1) twenty-fourth day of December in the year aforesaid, at L. aforesaid, in the parish, &c. aforesaid, tender, and cause to be tendered, unto the said defendant all his the said Thomas Weston's books, pa-

(1) " day and
year last afore-
said, at L. afore-
said, request the
said defendant
pers, to"

GENERAL INDEBITATUS ASSUMPSIT

pers, and vouchers belonging to his said business, for him the said defendant to take, accept, keep, and retain from thenceforth as his own goods and chattels for ever, and then and there requested the said defendant to accept the same, and to give him the said plaintiff a full and free and absolute discharge from the said debt claimed by the said defendant from the said plaintiff and T. N. and for which he had been so arrested, and to discharge him the said plaintiff from the said action, and from the said arrest, and from his imprisonment aforesaid, under and by virtue thereof: Yet the said defendant, not regarding, &c. but contriving, &c. he the said defend-

(1) "did not immediately. or within a reasonable time then next following, discharge"

ant (1) at the time when the said books, papers, and vouchers were so tendered to him, and always afterwards, refused to accept thereof, nor did he then, or at any other time before or afterwards, or to discharge the said Thomas Weston from the debt claimed by him the said defendant against the said plaintiff and T. N. or from the said action, or the said arrest, or the imprisonment aforesaid by virtue thereof, although to perform his aforesaid last-mentioned promise and undertaking, so by him made in this behalf as aforesaid, he the said defendant was requested by the said plaintiff afterwards, to wit, on the day and year last aforesaid, and often afterwards, to wit, at L. aforesaid, in the parish and ward aforesaid); but he so to

(2) "neglected and refused for a long time then next following, to wit, for the space of five months then next following, to wit, at L. aforesaid, in the parish, &c. aforesaid;"

do (2) *both wholly refused*; by means whereof the said plaintiff was kept and detained in the prison aforesaid against his will, and under the aforesaid arrest, *for want of bail to the said writ*, for a long time, to wit, for the space of five months next after the (3) *making of the tender of the aforesaid books, papers, and vouchers to the said defendant*, and was forced and obliged to lay out and expend a large sum of money, to wit, the sum of thirty pounds, in and about the obtaining and procuring his release and discharge from the said imprisonment, to wit, at L. aforesaid, in the parish and ward aforesaid. And whereas, &c. &c. (There was a second Count, leaving out what is in *Italic*, and inserting instead thereof what is in the margin.)

(3) "delivering up the possession of the premises aforesaid in form aforesaid,"

J. MORGAN.

DECLARATIONS ON COMMON PROMISES, &c. AND BY AND AGAINST PARTICULAR PERSONS.

Indebitatus assumpsit for goods, &c. sold and delivered.

MIDDLESEX. *ss.* Joseph Reading complains of Peter Mawson, *being in the custody*, &c. : for that whereas the said defendant heretofore, to wit, on the day of A. D. at Westminster in the county of Middlesex, was indebted to the said plaintiff in pounds of lawful money of Great Britain, for divers

divers goods, wares, and merchandizes (1) by said plaintiff before that time sold and delivered to the said defendant, and at his special instance and request; and being so indebted, he said defendant, in consideration thereof, afterwards, to wit, on the day and year afore said, at Westminster afore said, undertook and faithfully promised said plaintiff to pay him said sum of money when he the said defendant should be thereto afterwards requested: And whereas afterwards, to wit, on the same day and year afore said, at Westminster afore said, in consideration that said plaintiff, at the like special instance and request of said defendant, had before that time sold and delivered to said defendant divers other goods, wares, and merchandizes, he said defendant undertook, and then and there faithfully promised said plaintiff, to pay him so much money as he therefore reasonably deserved to have, when he said defendant should be thereto afterwards requested: And said plaintiff avers, that he therefore reasonably deserved to have of the said defendant other pounds of like lawful money, to wit, at Westminster afore said; whereof the said defendant afterwards, to wit, on the day and year afore said, there had notice.

(1) No occasion for plaintiff to say they were his goods.
Bull. Ni. Pri. 139.

Quantum meruit.

AND whereas, &c. &c. for the work and labour, care and diligence, of said plaintiff, by him said plaintiff and his servants before that time done, performed, and bestowed in and about the business of said defendant, and for the said defendant, and at his like special instance and request; and being so indebted, &c. (as before): And whereas, &c. in consideration that said plaintiff, at the like special instance and request of said defendant, had before that time, by himself and his servants, done, performed, and bestowed other his work and labour, care and diligence, in and about other the business of said defendant, and for said defendant, he said defendant undertook, and then and there, &c. to pay so much, &c.: And said plaintiff avers, &c. (as before).

Indebitatus assumpsit, work and labour by plaintiff and servants.

Quantum meruit.

AND whereas said defendant afterwards, &c. was indebted to said plaintiff in other pounds of like lawful money, by the said plaintiff before that time laid out, expended, and paid for the said defendant, and at his like special instance and request; and being so indebted, &c.

Money laid out, &c.

AND whereas, &c. said defendant afterwards, &c. was indebted to the said plaintiff in other pounds of like, &c. for money by said plaintiff before that time lent and advanced to the said defendant, and at his like special instance and request; and being so indebted, &c.

Money lent and advanced, &c.

AND whereas said defendant afterwards, to wit, on, &c. at, &c. was indebted to the said plaintiff in other pounds of received, &c. like

GENERAL INDEBITATUS ASSUMPSIT.

like lawful money, for money by the said defendant before that time had and received to the use of the said plaintiff; and being so indebted, &c.

Account stated.

AND whereas said defendant afterwards, to wit, on, &c. at, &c. accounted with said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then being in arrear and unpaid, and upon that accounting he the said defendant was then and there found in arrear to the said plaintiff in another large sum of money, to wit, the sum of pounds of like lawful money; and being so found in arrear, &c.

Common conclusion.

YET the said defendant, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not as yet paid the said several sums of money in those promises and undertakings, or any or either of them, or any part thereof, to the said plaintiff (al- though so to do the said defendant was requested by said plaintiff afterwards, to wit, on the day and year aforesaid, and often afterwards, to wit, at A. aforesaid); but he so to do hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiff of pounds, for which he brings his suit, &c.

If in the king's bench add pledges, &c.

Money laid out, &c. ditto lent, &c. and ditto had and received, in one Count.

AND whereas said defendant afterwards, to wit, on, &c. at, &c. was indebted to the said plaintiff in pounds of lawful, &c. for money by said plaintiff before that time laid out, expended, and paid for said defendant, at his special instance and request; and for other money by the said plaintiff before that time lent and advanced to the use of said defendant, and at his like (special instance and request, and for other money by the said defendant before that time had and received to the use of the plaintiff; and being so indebted, &c.

Indebitatus assumpsit for horse-meat, stabling, and attendance: Quantum meruit.

FOR horse-meat, stabling, and attendance by said plaintiff before that time found, provided, and supplied, for and about divers horses, mares, and geldings of said defendant, and at his like special instance and request; and being so indebted, &c. in consideration that said plaintiff, at the like special instance and request of said defendant, had before that time found, provided, and supplied other horse-meat, stabling, and attendance for divers other mares, &c. &c. of said defendant, and for said defendant, he the said defendant undertook, &c. to pay, &c. so much as, &c.; And the said plaintiff avers, that, &c.

FOR

FOR divers goods, wares, and merchandizes by the said plaintiff before that time bargained and sold to the said defendant at his like special instance and request; and being so indebted, &c. in consideration that said plaintiff, at the like special instance and request of the said defendant, had before that time bargained and sold to the said defendant divers other goods, wares, and merchandizes, he said defendant undertook, &c. to pay, &c. so much as, &c.: And said plaintiff avers, that, &c.

*Indebitatus est-
sumpsit for goods
bargained and
sold.*

Quantum meruit.

AND whereas said defendant afterwards, to wit, on, &c. at, &c. was indebted to said plaintiff in other pounds of like lawful, &c. for the work and labour, care and diligence, of said plaintiff, by him said plaintiff before that time done, performed, and bestowed in and about the business of the said defendant, and for the said defendant, and at his like special instance and request; and being so indebted, &c. (*Quantum meruit* accordingly.)

*Indebitatus est-
sumpsit for work
and labour gene-
rally.*

FOR the work and labour, care and diligence, of said plaintiff, before that time done, performed, and bestowed by him said plaintiff by himself and his servants, and with his horses, carts, and carriages, in and about the business of the said defendant, and for the said defendant, and at his like special instance and request; and being so indebted, &c. (*Quantum meruit* accordingly; then add Counts for work and labour generally; money laid out, &c.; and common conclusion.)

*Work and la-
bour by plaintiff
and servants
with horses and
carriages.*

FOR the work and labour, care and diligence, of said plaintiff, as a taylor, by him said plaintiff before that time done, performed, and bestowed in and about the business of the said defendant, and at his special instance and request; and also for divers materials and other necessary things used and applied in and about that business, and found and provided by the said plaintiff for the said defendant, and at his like special instance and request; and being so indebted, &c. (*Quantum meruit* accordingly.)

*Work and la-
bour as a taylor,
and materials
found.*

FOR the wages of said plaintiff before that time due and payable from said defendant to the said plaintiff, for his service before that time done and performed, as a sailor in, of, and belonging on board of a certain ship or vessel called the Nancy, whereof the said defendant was commander, and on the retainer of said defendant, and at his special instance and request; and being so indebted, &c. (*Quantum meruit* accordingly; Counts for work and labour generally; money laid out, &c.; and common conclusion.)

*For sailor's
wages, against
the captain.*

FOR

Work and labour as an apothecary, and medicines, &c. found.

FOR that whereas said defendant heretofore, to wit, on, &c. at, &c. was indebted to said plaintiff (the said plaintiff then, and for divers years, being an apothecary, and the profession of an apothecary from the time aforesaid using and exercising) in pounds of lawful, &c. for work and labour, care and diligence, of said plaintiff, by him said plaintiff, at the special instance and request of said defendant, before that time done, performed, and bestowed in and about the healing and curing of said defendant, and divers persons belonging to said defendant's family, of divers diseases, maladies, and disorders, under which they then laboured and languished, and for divers medicines, medicinal potions, plasters, and other necessary things before that time found and provided by said plaintiff for the said defendant and divers of his family, and at his like special instance and request; and being so indebted, &c. (*Quantum meruit* accordingly; Counts for goods sold and delivered; money laid out, &c.; and common conclusion.)

Work and labour as a schoolmaster.

FOR the work and labour, care and diligence, of said plaintiff, as a schoolmaster, by him said plaintiff before that time done, performed, and bestowed in and about the teaching and instructing one, &c. the infant son (or daughter) of said defendant, in reading, writing, good manners, and other necessary accomplishments and qualifications, for a long time, to wit, for the space of three years then elapsed, at the special instance and request of said defendant; and being so indebted, &c. (*Quantum meruit* accordingly; Counts for meat, drink, washing, lodging, books, and other necessary things found and provided by said plaintiff for said, &c. the infant son of said defendant, and at his special instance and request, &c.; *quantum meruit* accordingly; goods sold, &c. to defendant; money laid out, &c.; and common conclusion.)

Work and labour as a schoolmistress.

FOR the work and labour, skill and knowledge, of said plaintiff, as a schoolmistress, before that time done, performed, and bestowed in and about the teaching, &c. of, &c. the daughters of said defendant, in reading, writing, arithmetic, &c. for a long time, to wit, for the space of three years then elapsed, at the special instance and request of said defendant; and being so indebted, &c. (*Quantum meruit* accordingly.)

Work and labour as an undertaker, by plaintiff and his servants.

FOR the work and labour, &c. of said plaintiff, as an undertaker of funerals, before that time done, performed, and bestowed by said plaintiff and his servants, and with his horses, hearses, coaches, and other carriages, in and about the funeral of one S. M. at the special instance and request of said defendant, and on his retainer, and for divers materials and other necessary things before then found and provided, used and applied, in and about the fur-

furnishing and conducting the funeral aforesaid, at the like special instance and request of said defendant; and being so indebted, &c. (*Quantum meruit* accordingly; Counts for the hire of goods and chattels, &c.; money laid out, and goods sold, &c.; common conclusion.)

FOR the work and labour, care and diligence, of said plaintiff, by him before that time done and performed in and about the drawing of divers plans and elevations of dwelling-houses and buildings of said defendant, and at his special instance, &c. and also in and about the surveying and superintending, and taking care of a certain building, to wit, a dwelling-house of him said defendant, during the erection thereof, to wit, at, &c. aforesaid, on the retainer of said defendant, and at his like special instance and request, and for his the said plaintiff's attendance and care in and about the same, by him done, performed, and employed for said defendant, and at his like special instance and request; and being so indebted, &c. in consideration that said plaintiff, at the like special instance and request of said defendant, and on his retainer, had before that time done, performed, and bestowed other his work, &c. in and about the drawings of divers other plans and elevations of dwelling-houses and other buildings for the said defendant, and also in and about the surveying and superintending, and taking care of a certain other building, to wit, a certain other dwelling-house of him said defendant, during the erection thereof, to wit, at, &c. aforesaid, on the retainer of said defendant, and at the like special instance and request of said defendant had done, performed, and employed *his the said plaintiff's attendance and care* for the said defendant in and about the same, he the said defendant undertook, and then and there faithfully promised the said plaintiff, to pay him so much as, &c.: And said plaintiff avers, that, &c. And whereas, &c. (Counts for work and labour generally.)

For drawing plans, surveying houses, &c. at the suit of a surveyor.

Quantum meruit.

FOR the work and labour of said plaintiff, by said plaintiff before that time done, &c. in making divers journies, and giving his attendance in and about the business of said defendant, and for said defendant, and at his special instance and request; and being so indebted, &c. in consideration that said plaintiff, at the like special instance and request of said defendant, had before that time done, &c. other his work and labour, &c. in the performing divers other journies, and giving other his attendance in and about the business of said defendant, and for said defendant, he said defendant undertook, and then and there faithfully promised, &c. to pay him so much, &c.: And said plaintiff avers, that, &c.

Work and labour in making journies, and attendance thereon.

Quantum meruit.

THAT

PHYSICIAN, MIDWIFE, SERVANT's WAGES.

Work and labour as a physician or doctor of physic.

THAT WHEREAS said defendant, on, &c. at, &c. was indebted to the said plaintiff, he said plaintiff then, and for divers years then last past, being a doctor of physic, for all the time aforesaid using and exercising, in pounds of lawful, &c. for the work, &c. of said plaintiff before that time done, &c. in about the visiting of and prescribing physic to and for said defendant, labouring and languishing under divers diseases, maladies, and disorders, at the special instance and request of said defendant; and being so indebted, &c. in consideration that said plaintiff (so being a doctor of physic as aforesaid, and using the said profession as aforesaid), at the like special instance and request of said defendant, had before that time done, performed, &c. other his work, &c. in and about the visiting and prescribing other physic to and for said defendant, labouring and languishing under divers other diseases, &c. he said defendant undertook, &c. to pay him so much as, &c.: And said plaintiff avers, that, &c.

Quantum meruit.

It is determined, that a physician cannot maintain an action for his fees.

Work and labour as a midwife.

FOR the work, &c. of said plaintiff as a midwife (she the said plaintiff then, and long before, and continually from thence afterwards, using and exercising the art or business of a midwife) before that time done, &c. by said plaintiff to and for one the wife of said defendant, at the special instance and request of said defendant; and being so indebted, &c. in consideration that said plaintiff (so being such midwife, and exercising such art and business as aforesaid), at the like special instance and request of said defendant, had before that time done, &c. her work, &c. as a midwife, to and for said the wife of the said defendant, he said defendant undertook, &c. to pay him so much as, &c.: And said plaintiff avers, that, &c. (Counts for work and labour generally; money laid out; and common conclusion.)

Quantum meruit.

NOTE, If a midwife is married, the action must be brought by the husband alone, for he by law is entitled to the earnings of the wife. The declaration in such case is, that defendant is indebted to plaintiff for the work, &c. of M. the wife of said plaintiff, as a midwife, &c. with

a *quantum meruit*, adding Counts for work and labour generally, as follows: "for the work, &c. of said plaintiff done by him and his servants, &c.;" for in law, the wife is the servant of the husband; and so in other similar cases; though the two last Counts would be sufficient.

For servant's wages.

FOR the wages or salary of said plaintiff before that time due and owing to said plaintiff from said defendant, for the service of said plaintiff, before then done, performed, and bestowed by said plaintiff, as the servant of said defendant, for a long time, to wit, then elapsed, on his retainer, and at his special instance and request; and being so indebted, &c. in consideration that said plaintiff, at the like special instance and request

Quantum meruit.

quest of said defendant, had before that time done, performed, and bestowed other his service, as the servant of said defendant, and on his retainer, for a long time, to wit, for the space of, &c. then elapsed, the said defendant undertook, and then and there promised, &c. to pay him so much, &c.: And said plaintiff avers, that, &c. (Counts for work and labour generally; money laid out, &c.; and common conclusion.)

FOR the work, &c. of said plaintiff before that time done, &c. by said plaintiff, as the attorney or solicitor of said defendant, in and about the drawing, writing, and engrossing of divers deeds and instruments, and making of divers journies, and giving his attendance in and about the business of said defendant, and for said defendant, and at his special instance and request, and upon his retainer, and for money by the said plaintiff before that time laid out, expended, and paid for said defendant in that particular, and at his like special instance and request; and being so indebted, &c. in consideration that said plaintiff, as the attorney or solicitor of said defendant, had before that time done, performed, and bestowed other his work and labour, care and diligence, in and about the drawing, writing, and engrossing of divers other writings, deeds, or instruments, and the going, making, and performing divers other journies, and giving other his attendance in and about other the business of said defendant, and for the said defendant, and at his like special instance and request, and upon his like retainer, he said defendant undertook to pay him so much as, &c.: And said plaintiff avers, &c.

On an attorney's bill, for drawing deeds, &c. making journies, attendances, &c. &c.

Quantum meruit.

FOR the work, &c. of said plaintiff by him the said plaintiff, as the attorney and solicitor of said defendant, and upon his retainer, before that time done, &c. for said defendant, in and about the prosecuting and defending divers suits at law and in equity in the said court here, and in other his majesty's courts of record at Westminster, at his special instance and request, and also in drawing, writing, and engrossing divers writings, deeds, and instruments, and making divers journies, and giving his attendance in and about other the business of said defendant, and for said defendant, and at his like special instance and request, and upon his like retainer, and for money by said plaintiff before that time laid out, expended, and paid for said defendant in that particular, and at his like special instance and request; and being so indebted, &c. in consideration that said plaintiff, as the attorney or solicitor of said defendant, at the like special instance and request of said defendant, and on his like retainer, had before that time done, &c. other his work, &c. for said defendant in and about the prosecuting and defending divers other suits at law and in equity in said court here, and in other his majesty's courts of record at Westminster, and in drawing, &c. divers other writings, &c. making

On an attorney's bill, for prosecuting and defending suits, drawing deeds, &c. attendances, journies, &c. &c.

Quantum meruit.

CARRIERS, FOR FREIGHT, NECESSARIES, AGISTORS.

making divers other journies, and giving other his attendance in and about other the business of said defendant, and at his like special instance and request, and upon his like retainer, he said defendant undertook, &c. to pay him so much as, &c.: And said plaintiff avers, that, &c.

For freight of goods.

FOR the freight of divers goods, wares, and merchandizes of the said defendant, by said plaintiff before that time transported, carried, and conveyed from, &c. to, &c. in certain ships or vessels of him said plaintiff, for the said defendant, and at his special instance and request; and being so indebted, &c. in consideration that said defendant, at the like special instance, &c. of said defendant, had before that time transported, carried, and conveyed divers other goods, &c. of said defendant, and for said defendant, in certain other ships and vessels of him said plaintiff, from, &c. to, &c. he the said defendant undertook, &c. to pay so much as, &c.: And said plaintiff avers, that, &c.

Quantum meruit.

For necessities found for defendant's child, or third person, at defendant's request.

FOR the meat, drink, washing, and lodging, and other necessities by said plaintiff before that time found and provided for one (the infant son or daughter of said defendant), at the like special instance and request of said defendant; and being so indebted, &c. (*Quantum meruit* accordingly.)

For the agistment of cattle.

FOR the agisting, feeding, keeping, and depasturing of divers cattle of said defendant, by the said plaintiff before that time agisted, fed, kept, and depastured in the pastures of said plaintiff, for the said defendant, and at his like special instance and request; and being so indebted, &c. (*Quantum meruit* accordingly.)

For a stone-horse covering a mare.

FOR the use of certain stone-horses of said plaintiff, by said defendant before that time had and used for, in, and about the covering of divers mares of the said defendant, for said defendant, and at his special instance and request; and being so indebted, &c. in consideration that said plaintiff, at the like special instance and request of said defendant, had before that time suffered and permitted divers other stone-horses of him said plaintiff to cover divers other mares of said defendant, and that said last-mentioned stone-horses of said plaintiff had accordingly covered said last-mentioned mares of said defendant, he said defendant undertook, &c. to pay him so much, &c.: And said plaintiff avers, that, &c. (Add Counts for work and labour of the plaintiff by himself and his horses, &c.; money laid out, &c.; and common conclusion.)

Quantum meruit.

FOR

FOR divers goods, wares, and merchandizes, by said plaintiff before that time sold to said defendant, and according to the terms of such sale delivered to one at the special instance and request of said defendant; and being so indebted, &c. in consideration that said plaintiff, at the like special instance, &c. of said defendant, had before that time sold to the said defendant divers other goods, wares, and merchandizes, and according to the terms of such sale had delivered same to one he said defendant undertook, &c. to pay him so much, &c.: And said plaintiff avers, that, &c.

For goods, &c. sold to defendant, and delivered to a third person at defendant's request.

Quantum meruit.

IN consideration that said plaintiff, at the special instance, &c. of said defendant, would sell and deliver to one, &c. divers goods, &c. to wit, &c. of a large value, to wit, &c. he said defendant undertook, &c. to pay him said plaintiff the said sum of &c. when, &c.: And said plaintiff avers, that he, confiding in said promise, &c. of said defendant, did afterwards, to wit, on, &c. at, &c. at the special instance, &c. of said defendant, sell and deliver to said, &c. the said goods, &c. to wit, &c.; whereof said defendant afterwards, to wit, on, &c. at, &c. afore said, had notice; by means whereof, and according to the tenor and effect of said promise, &c. said defendant then and there became liable to pay, and ought to have paid, to said plaintiff said sum of, &c. to wit, at, &c. afore said. (*Quantum meruit* of the same kind, making the promise to pay so much as plaintiff deserved to have; and aver, that he deserved to have pounds as common.)

For goods, &c. sold to a third person at defendant's request, executory.

A promise to pay absolutely is not within the statute of Frauds, but to see him paid would be so. Holdmy v. Allen, MSS. Mich. 1783.

FOR the use and occupation of a certain seat of the said plaintiff in a certain pew in the parish-church of, &c. by the said defendant before that time had, used, occupied, possessed, and enjoyed by himself and divers others of his family, every Sunday and holiday for a long time, to wit, for the space of, &c. then elapsed, for the hearing and attending therein of divine service performed in the said church, by permission of the said plaintiff, and at the special instance and request of the said defendant; and being so indebted, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, had before that time permitted and suffered the said defendant and divers others of his family to sit in and use a certain seat of the said plaintiff in a certain pew in the parish church of afore said, to hear and attend divine service there; and that the said defendant and divers others of his family had, according to that permission, sat in and used the same for a long time, to wit, for the space of, &c. then elapsed, he the said defendant undertook, &c. to pay him so much, &c.: And the said plaintiff avers, that, &c.

For the use of a pew.

FOR

Indebitatus assumpsit for a partnership debt, at the suit of a surviving partner.

Quantum meruit.

FOR that whereas the said defendant heretofore, in the life-time of one A. B. deceased, and whom the said plaintiff hath survived; to wit, on, &c. at, &c. was indebted to the said plaintiff and A. B. in pounds of lawful; &c. for divers goods, wares, &c. before that time sold and delivered by the said plaintiff to the said defendant, at his special instance and request; and being so indebted, he the said defendant, in consideration thereof, afterwards, in the lifetime of the said A. B. to wit, on, &c. at, &c. aforesaid, undertook; &c. to pay them the said sum of money; when he the said defendant should be thereto afterwards requested. And whereas afterwards, in the lifetime of the said A. B. to wit, on, &c. at, &c. aforesaid, in consideration that the said plaintiff and A. B. at the like special instance, &c. of the said defendant, had before that time sold and delivered to the said defendant divers other goods, &c. he the said defendant undertook, &c. to pay him so much, &c.: And the said plaintiff avers, that he the said plaintiff and the said A. B. in the lifetime of the said A. B. therefore reasonably deserved, &c.; whereof the said defendant afterwards, in the lifetime of the said A. B. to wit, on, &c. at, &c. aforesaid, had notice: Yet the said defendant, not regarding; &c. but contriving, &c. to deceive and defraud the said plaintiff and A. B. in the lifetime of the said A. B. and the said defendant since his decease, hath not as yet paid the said several sums of money, or either of them, or any part thereof, either to the said plaintiff and A. B. in the lifetime of the said A. B. or to the said plaintiff since his death, or to either of them (although to pay the same the said defendant was requested by the said plaintiff and A. B. in the lifetime of the said A. B. to wit, on, &c. aforesaid, and by the said plaintiff since the death of the said A. B. to wit, on, &c. and often afterwards, to wit, at, &c. aforesaid); but he so to do hath hitherto wholly refused, and still refuses, to pay the same, or any part thereof, to the said plaintiff, to wit, at, &c. aforesaid, to the damage of the said plaintiff, as such surviving partner as aforesaid of A. B.; for which he brings his suit.

For the hire of horses, &c.

Quantum meruit.

FOR the hire of horses, mares, and geldings of the said plaintiff, by him the said plaintiff before that time let to hire to the said defendant, at his special instance and request, and by him the said defendant, according to that letting to hire, had and used; and being so indebted, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, had before that time let to hire to the said defendant divers other horses, &c. of the said plaintiff, and that the said defendant had, according to that letting to hire, had and used the same, he the said defendant undertook, &c. to pay him so much money as, &c.: And the said plaintiff avers, that, &c.

FOR

FOR the use and occupation of a certain messuage or tenement, with the appurtenances, situate at, &c. (according as premises are situated), by him the said defendant, at his request, and by the permission of the said plaintiff, for a long time, to wit, for the space of then elapsed, had held, used, occupied, and possessed; and being so indebted, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, had before that time permitted the said defendant to have, hold, use, occupy, possess, and enjoy a certain other messuage, or tenement, with the appurtenances, situate at, &c. aforesaid, and that said defendant, according to that permission, had held, used, occupied, possessed, and enjoyed the same for a long time, to wit, for the space of, &c. then elapsed, he the said defendant undertook, &c. to pay him so much as, &c.: And the said plaintiff avers, that, &c.

For the use and occupation of a messuage, land, lodgings, &c.

Quantum meruit.

If there be a special agreement, and you declare upon it, and also a *quantum meruit*, if you do not recover on the agreement, you cannot on the *quantum meruit*: but if you declare on the *quantum meruit* you may give the agreement in evidence, if performed. Bull. Nl. Pri. 139.

IF for the use and occupation of land and messuage, say, For land, &c.
 "For the use and occupation of a certain messuage, or, &c. and
 "acres of land, with the appurtenances, lying and being in
 "the parish of, &c." N.B. You must describe the nature of the
 land, one hundred acres of arable land, one hundred acres of pasture, and one hundred acres of meadow land, &c.

IF for ready-furnished lodgings, say, "For the use, &c. of For ready-furnished lodgings.
 "certain ready-furnished lodgings, with the appurtenances, being
 "part and parcel of a certain messuage or dwelling-house, situate
 "at, &c."

IF for unfurnished lodgings, say, "For the use, &c. of For unfurnished lodgings.
 "tain rooms, with the appurtenances, being in and part and parcel
 "of a certain messuage, &c. situate, &c."

NOTE. *Nil habuit in senectutis* is not a good plea to an action for use and occupation: but in debt for rent upon a lease not indebted, this plea may be pleaded; because an interest passes by a lease; nor is there any occasion for the plaintiff to shew any title upon these contracts. 1. Will. 314. Bull. Nl. Pri. 139.

FOR meat, drink, washing, lodging, and other necessities, For necessities, &c. found.
 by the said plaintiff before that time found and provided for the said defendant, and at his special instance and request; and being so indebted, &c. (*Quantum meruit* accordingly.)

Declaration for
meat, drink,
washing, and
lodging, found
for a third per-
son, at defend-
ant's request.

FOR that whereas the said H. P. on, &c. at, &c. was indebted to the said Thomas in the sum of pounds of lawful money of Great Britain, for meat, drink, washing, and lodging, and other necessary things, before that time found and provided for one A. B. at the special instance and request of the said H. P.; and being so indebted he the said H. P. afterwards, to wit, on, &c. at, &c. in consideration thereof, undertook, and then and there faithfully promised the said Thomas, to pay him the said sum of money, when he the said H. P. should be thereto afterwards requested. And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said Thomas had before that time found and provided other meat, drink, washing, and lodging, and other necessary things, for the said A. B. and at the like special instance and request of the said H. P. he the said H. P. undertook, and then and there faithfully promised the said Thomas, to pay him so much money as he therefore reasonably deserved to have, when he the said H. P. should be thereto afterwards requested: And the said Thomas in fact says that he reasonably deserved to have of the said H. P. for the said last-mentioned meat, drink, washing, and lodging, and other necessary things, the sum of pounds of like lawful money, to wit, at, &c.; whereof the said H. P. afterwards, to wit, on, &c. at, &c. had notice. (Money paid, &c.; and common conclusion to the whole.)

Declaration for
the maintenance
and education of
the plaintiff's
daughters.

FOR that whereas the said J. P. on, &c. at, &c. was indebted to the said E. L. in fifty pounds of lawful money of Great Britain, for the board, maintenance, and education of one A. B. and C. D. daughters of the said J. P. for a long time before then elapsed, found, furnished, supplied, and provided by the said E. L. at the special instance and request of the said J. P.; and being so indebted, &c.: And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said E. L. had before that time, at the like special instance and request of the said J. P. found, furnished, supplied, and provided other board, maintenance, and education for the said A. B. and C. D. the afore said daughters of the said J. P. for a certain other long time before then elapsed, he the said John undertook, and then and there faithfully promised the said E. L. to pay her so much money as she therefore reasonably deserved to have, when he the said John should be thereto afterwards requested: And the said E. L. avers, that she therefore reasonably deserved to have of the said John other fifty pounds of like lawful money, to wit, at, &c.; whereof the said John afterwards, to wit, on, &c. at, &c. there had notice. (Money paid; and common conclusion to the whole.)

Declaration by
plaintiffs, who
were surgeons,
against executors,

MIDDLESEX, to wit. Charles Hales and Charles Swift complain of J. B. and J. C. executors of the last will and testament of the said deceased, for their attendance and administering medicines to the testator in his lifetime.

ment

ment of J. B. deceased, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, of a plea of trespass on the case: for that whereas the said J. B. in his lifetime, to wit, on, &c. at, &c. was indebted to the said C. H. and C. S. (they the said C. H. and C. S. then, and for divers years then last past, being surgeons, and the business of a surgeon for all the time aforesaid using and exercising) in two hundred pounds of lawful money of Great Britain, for the work and labour, care and diligence, of the said C. H. and C. S. by them in the lifetime of the said J. B. and at his special instance and request before that time done, performed, and bestowed, as surgeons, in and about the healing and curing of the said J. B. of divers diseases and maladies under which he had laboured and languished, and for divers medicines, medicinal potions, plaisters, and other necessary things, used and applied on those occasions, before that time found, provided, and applied by them the said C. H. and C. S. at the like special instance and request of the said J. B. in his lifetime; and being so indebted, he the said J. B. in his lifetime, in consideration thereof, afterwards, to wit, on, &c. undertook, and then and there faithfully promised the said C. H. and C. S. to pay them the said sum of money when he the said J. B. should be thereto afterwards requested. And whereas afterwards, to wit, on, &c. in consideration that the said C. H. and C. S. (then, and for divers years then last past, being surgeons, and the business of a surgeon for all the time aforesaid using and exercising), at the like special instance and request of the said J. B. in his lifetime, had before that time done, performed, and bestowed other their work and labour, care and diligence, as surgeons, in and about the healing and curing of the said J. B. in his lifetime of divers other diseases and maladies under which he had laboured and languished, and had, at the like special instance and request of the said J. B. in his lifetime, found, provided, and applied divers other medicines, medicinal potions, plaisters, and other necessary things used and applied on those occasions, he the said J. B. in his lifetime undertook, and then and there faithfully promised the said C. H. and C. S. to pay them so much money as they therefore reasonably deserved to have, when he the said J. B. should be thereto afterwards requested: And the said C. H. and C. S. aver, that they therefore reasonably deserved to have of the said J. B. in his lifetime for the same other two hundred pounds of like lawful money, to wit, at Westminster aforesaid; whereof he the said Joseph in his lifetime, afterwards, to wit, on the same day and year aforesaid, there had notice. And whereas the said Joseph in his lifetime, afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, was indebted to the said C. H. and C. S. in other two hundred pounds of like lawful money, for other the work and labour, care and diligence, of the said C. H. and C. S. by them before that time done, performed, and bestowed, as surgeons, in and about the healing and curing of the said Joseph in his lifetime of divers other diseases and maladies under which he

ASSUMPSIT.—BY CLERGYMEN, SURGEONS, &c.

had laboured and languished, and at his special instance and request, and for divers medicines, medicinal potions, plaisters, and other things, used and applied on those occasions, before that time found, provided, and applied by them the said C. H. and C. S. at the like instance and request of the said Joseph in his lifetime; and being so indebted, he the said Joseph in his lifetime, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, undertook, and faithfully promised the said C. H. and C. S. to pay them the said last-mentioned sum of money, when he should be thereto afterwards requested. And whereas afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in consideration that the said C. H. and C. S. at the like special instance and request of the said Joseph in his lifetime, had before that time done and performed other their work and labour, care and diligence, as surgeons, in and about the healing and curing of the said Joseph of divers other diseases and maladies under which he had laboured and languished, and had, at the like instance and request of the said Joseph, before that time found, provided, and applied, divers other medicines, medicinal potions, and plaisters, and other necessary things in that particular, he the said Joseph in his lifetime undertook, &c. (*Quantum meruit*. There were, besides the foregoing Counts, two others in this declaration for work and labour, with materials found, generally; money Counts; and conclusion.)

Declaration by
a curate against
his rector, for
preaching and
officiating as his
curate.

MIDDLESEX, to wit. A. complains of B. being, &c.: for that whereas the said B. on, &c. at, &c. in, &c. was indebted to the said A. in the sum of fifty pounds of lawful money of Great Britain, for the work and labour of the said A. before that time done and performed for the said B. in preaching and celebrating divine service at the parochial church of C. at the special instance and request of the said B.; and being so indebted, he the said B. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. And whereas, &c. (*Quantum meruit*.)

For necessities
found and pro-
vided.

AND whereas the said defendant afterwards, to wit, on, &c. at, &c. was indebted to the said plaintiff in ten pounds of lawful money of Great Britain, for meat, drink, washing, lodging, and other necessities, by the said plaintiff before that time found and provided for the said defendant, and at his special instance and request; and being so indebted, &c. And whereas, &c. (*Quantum meruit* accordingly; money laid out, &c.; and common conclusion.

Declaration for
a surgeon's bill.

AND whereas the said defendant afterwards, to wit, on, &c. at, &c. was indebted to the said plaintiff (*the said plaintiff then,*
and

and for divers years then last past, being a surgeon, and the business of a surgeon for all the time aforesaid using and exercising) in twenty pounds of lawful money of Great Britain, for the work and labour, care and diligence, of the said plaintiff, at the special instance and request of the said defendant, before that time done, performed, and bestowed, as a surgeon, in and about the healing and curing of the said defendant of divers diseases and maladies under which he had laboured and languished, and for divers medicines, medicinal potions, plaisters, and other necessary things, before that time provided and applied by the said plaintiff, at the special instance and request of the said defendant in that behalf; and being so indebted, &c. And whereas afterwards, to wit, on, &c. at, *Quantum meruit.* &c. in consideration that the said plaintiff (being then a surgeon as aforesaid, and using the said art), at the special instance and request of the said defendant, had before that time done, performed, and bestowed, other his work and labour, care and diligence, as a surgeon, in and about the healing and curing of the said defendant of divers other diseases and maladies under which he had laboured and languished, and had in that behalf, and at the like special instance and request of the said defendant, provided and applied divers other medicines, &c. he the said defendant undertook, &c. (Add two more Counts same as the former, only omitting what is in *Italic*; add two more Counts for work and labour as an apothecary; add two more Counts for work, &c. and materials found; money laid out; ditto had and received; and common conclusion.

N. B. The reason of the foregoing Counts, consisting of these four Counts, two for work, &c. as a surgeon, and two for work &c. as an apothecary, is, because we often meet with people practising as doctors or surgeons who are really not so, as licentiates and graduates practise as doctors though they are not so, and apothecaries often practise as surgeons; so do many other persons under licences from bishops; therefore you cannot depend on the two first Counts, for there plaintiff must prove himself an actual doctor of physic or surgeon, as he is stiled in the declaration, and therefore

the two last Counts are added, for fear the two first Counts should not be true, or at least must be proved of a person who is neither doctor, surgeon, or person authorised to practise as such. However, he who performs a cure is intitled by law to his *quantum meruit*, though he may lay himself under the penalty of practising without license; and in case of a cure done by such person, we only declare on a general *indebitatus assumpsit* for work, &c. done by plaintiff in and about the curing, &c. without shewing it was done by plaintiff, being a doctor or surgeon, or as a surgeon or apothecary.

AND whereas the said defendant afterwards, to wit, on, &c. For the mooring at, &c. was indebted to the said plaintiff in ten pounds of lawful money of Great Britain, for the mooring and fastening of a certain ship or vessel, called, &c. to a certain chain of the said plaintiff, lying and being in the river Thames, in the said county of Middlesex, before then, and for a long time, to wit, for the space of three years, moored and fastened at D. by the said defendant to the said chain of the said plaintiff, and by his permission and sufferance, at the special instance and request of the said defendant;

Quantum meruit. and being so indebted, &c. And whereas afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff had before, at the like special instance and request of the said defendant, permitted and suffered the said defendant to moor and fasten a certain other ship or vessel, called, &c. to a certain other chain of the said plaintiff, there being in the river Thames in the county aforesaid; and that the said defendant, by virtue of such permission and sufferance, had before then moored and fastened the said ship or vessel to the said chain there for a long time, to wit, for the space of, &c. before then elapsed, he the said defendant undertook, &c.: And the said plaintiff avers, &c.

Assumpsit against one of two persons, where the other was outlawed, for goods sold, &c.
Vide Lill. Ent.
44.

FOR that whereas the said defendant, together with one A. B. late of, &c. (partner and joint dealer with the said defendant, which said A. B. was and now is in due manner outlawed in the court of our lord the king, before his justices at Westminter), on, &c. to wit, at, &c. was indebted to the said plaintiff in one hundred pounds of lawful money of Great Britain, for divers goods, &c. by the said plaintiff before that time sold and delivered to the said defendant and A. B. who, &c. at their special instance and request; and being so indebted, they the said defendant and A. B. who, &c. in consideration, &c. And whereas, &c. (a *quantum meruit* accordingly): Yet the said defendant and A. B. who, &c. before (and the said defendant since) the said outlawry was had, not regarding, &c. but contriving, &c. have not, nor hath either of them, paid, &c. (although so to do the said defendant and A. B. who, &c. before the said outlawry was had, were, and each of them was, oftentimes requested, and the said defendant, since the said outlawry was had, hath been requested by the said plaintiff, afterwards, to wit, on, &c. and often afterwards, to wit, at, &c.); but they to do this have, and each of them hath, hitherto wholly refused, and the said defendant still refuses so to do, to the damage, &c.

Conclusion.

Indebitatus assumpsit for tonnage on a canal.

AND whereas the said defendant afterwards, to wit, on, &c. at, &c. was indebted to the said plaintiff in one hundred pounds of lawful money of Great Britain, for the tonnage of divers goods, wares, and merchandizes, by him the said plaintiff before that time navigated, carried, and conveyed upon divers parts of a certain navigable cut or canal, navigable and passable from the river A. to the river B. in certain barges and other vessels, for the said defendant, and at his special instance and request; and being so indebted, &c. &c. And whereas afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff had before that time; at the like special instance and request of him the said defendant, navigated, carried, and conveyed divers other goods, wares, and merchandizes of him the said defendant upon divers parts of the said cut or canal, in certain other boats, barges, and other vessels, for him the said defendant, he the said defendant undertook, and then and there faithfully promised the said plaintiff, to pay him the said

Quantum meruit.

said plaintiff so much money as he therefore reasonably deserved to have for the tonnage thereof, when he the said plaintiff should be thereto afterwards requested: And the said plaintiff avers, &c. &c.

AND whereas the said R. H. as such executrix as aforesaid, after the death of the said J. R. and in the lifetime of the said A. W. to wit, on, &c. at, &c. accounted with the said A. W. of and concerning divers sums of money due and owing from the said J. R. in his lifetime, and at the time of his death, to the said A. W. then in arrear and unpaid; and upon that accounting it was found that the said J. R. at the time of his death, was in arrear and indebted to the said A. W. in a large sum of money, to wit, the sum of fifty-four pounds of like lawful money, and that a part of the said sum of fifty-four pounds, to wit, the sum of twenty-four pounds, then, to wit, on, &c. and at the time of the said R. H.'s accounting with the said A. W. as aforesaid, remained and was due and unpaid to him the said A. W. either by the said J. R. in his lifetime, or by the said R. H. executrix as aforesaid, after his death; whereupon the said R. H. as such executrix as aforesaid, in consideration of the premises, then and there, to wit, on, &c. at, &c. undertook, and faithfully promised the said A. W. to pay him the said sum of twenty-four pounds, when she the said R. H. as such executrix as aforesaid, should be thereto afterwards requested: Yet the said R. H. not regarding her said promise and undertaking, but contriving and fraudulently intending to deceive and defraud the said A. W. in his lifetime, and the said plaintiffs, executors as aforesaid, since his death, in this behalf, hath not as yet paid the said sum of twenty-four pounds, or any part thereof, either to the said A. W. in his lifetime, or to the said plaintiffs, executors as aforesaid, or to any or either of them, since his death (although to do this she the said R. H. as such executrix as aforesaid, was requested by the said A. W. in his lifetime, to wit, on, &c. and often afterwards, to wit, at, &c.; but she to pay the same to any or either of them hath always wholly refused, and she doth still refuse to pay the same, or any part thereof, to the said plaintiffs, as executors as aforesaid, or to any or either of them, to the said plaintiffs, as such executors as aforesaid, their damage of fifty pounds; and therefore they bring suit. (Profert of letters testamentary.)

An account stated between the executrix of the debtor with the plaintiff's testator.

Conclusion to a declaration, executor against executor.

V. LAWES,

—, to wit. S. D. and T. R. assignees of the estates and effects of A. B. an insolvent debtor, according to the form of the statutes in such case lately made and provided, complains of E. T. being, &c.: for that whereas the said E. T. on, &c. at, &c. was indebted to the said A. B. before his discharge from prison hereafter mentioned, in twenty pounds of lawful money of Great Britain,

Declaration by the assignees of an insolvent debtor, for money had and received, and for money lent.

Britain, for so much money before that time received by the said E. T. to the use of the said A. B. ; and being so indebted, he the said E. T. in consideration thereof, afterwards, and before the discharge of the said A. B. from prison hereafter mentioned, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said A. B. to pay the said sum of twenty pounds whenever he the said E. T. should be thereto afterwards requested. And whereas, &c. (this Count for money lent) : And the said plaintiffs aver, that after the making of the said several promises and undertakings, and before and at the time of the making of a certain act of parliament of our lord the king, holden at Westminster in the county of Middlesex, in the twenty-first year of his majesty's reign, entitled, " An Act for the Relief of Insolvent Debtors ;" and on the first day of January 1747, in the said act mentioned, the said A. B. was, and continually from the day and year last mentioned until his discharge from prison hereafter mentioned continued a prisoner for debt in his majesty's prison for the said county of G. commonly called the county gaol of that county : And the said plaintiffs further say, that he the said A. B. afterwards, and before the exhibiting of this bill, to wit, on, &c. at, &c. was duly discharged from that imprisonment by virtue of the said act, and afterwards, and before the exhibiting of this bill, at, &c. the said plaintiffs were duly chosen and appointed assignees of the said estate and effects of the said A. B. according to the form of the same act ; whereof the said defendant then and there had notice : Yet, &c. (conclude like a declaration by assignees of a bankrupt.

Declaration against defendant, for money due to the plaintiff for mahogany, part of which he had delivered to the purchaser, who died, and the residue he delivered to the widow, at the request of defendant, who undertook to see plaintiff paid : plaintiff had entered a caveat to prevent proving the will of the deceased.

—, to wit. W. G. complains of N. P. being, &c. ; for that whereas the said plaintiff heretofore, that is to say, on, &c. was possessed of divers large quantities of mahogany, to wit, twenty-three logs of mahogany ; and being so possessed of the said twenty-three logs of mahogany, he the said plaintiff afterwards, to wit, on, &c. sold to one A. B. the said twenty-three logs of mahogany for a large sum of money, to wit, the sum of thirty pounds of lawful money of Great Britain, upon credit, and afterwards, to wit, on, &c. delivered to the said A. B. a part of the said mahogany, to wit, ten logs of the said mahogany : And whereas also afterwards, to wit, on, &c. the said A. B. died, without having taken away the residue of the said mahogany : And whereas also the said plaintiff, before the making of the promise and undertaking hereafter mentioned, to wit, on, &c. had entered a caveat in the prerogative court of the archbishop of Canterbury to prevent the proving any will of the said A. B. or the granting letters of administration for the estate and effects of the said A. B. : and thereupon, in consideration that the said plaintiff, at the special instance and request of the said defendant would withdraw his said caveat from the said prerogative court of the said archbishop of Canterbury, and would, at the like special instance and

and request of the said defendant, deliver to M. B. widow of the said A. B. the residue of the said twenty-three logs of mahogany, he the said defendant, on, &c. undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would see and procure payment to be made to the said plaintiff for the whole of the said mahogany: And the said plaintiff in fact says, that he, relying and confiding in the said promise and undertaking of the said defendant, afterwards, to wit, on, &c. at, &c. did withdraw his said caveat from the said prerogative court of the archbishop of Canterbury, and on, &c. did deliver to the said M. B. widow of the said A. B. deceased, the residue of the said twenty three logs of mahogany; of all which said premises the said defendant then and there had notice: Yet the said defendant, not regarding his said promise and undertaking by him made in that behalf to the said defendant as aforesaid, but contriving, &c. hath not, although often requested, seen or procured payment to be made to the said plaintiff for the whole of the said mahogany, or any part thereof; but on the contrary thereof, he the said defendant so to do hath hitherto wholly refused, and still doth refuse. And whereas also the said plaintiff, on, &c. (as before, only say 2d Count, that A. B. died *intestate*, without having taken away, &c. and omitting the proving any will, that the defendant promised to pay him the said plaintiff the price of the said last-mentioned mahogany, to wit, the said last-mentioned sum of thirty pounds, when he the said plaintiff should be thereto afterwards requested): Yet, &c. And whereas, &c. (goods sold and delivered to M. B. at defendant's request). And whereas, &c. (*Quantum meruit* to ditto; 3d Count. money paid, &c.)

Quere, Whether the first Count is account I inserted the second, though not within the statute of Frauds; on that contrary to the real fact. F. BULLER.

—, to wit. F. A. and W. H. churchwardens of A. in the said county of M. complain of T. B. late churchwarden of A. aforesaid, being, &c. : for that whereas the said defendant, on, &c. at, &c. was indebted to the said plaintiffs, as churchwardens as aforesaid, in the sum of twenty pounds of lawful money of Great Britain, for so much money by the said defendant, as late churchwarden as aforesaid, to and for the use of the parishioners of A. aforesaid, before that time had and received; and being so indebted, &c. : And whereas also the said defendant afterwards, to wit, on, &c. at, &c. accounted together with the said plaintiffs, as churchwardens as aforesaid, of and concerning divers sums of money before that time due and owing from the said defendant, as late churchwarden as aforesaid, to the parishioners, and then in arrear, &c. &c. : Yet, &c. to defraud the said parishioners and the said plaintiffs, as churchwardens as aforesaid [lay a particular request] : Wherefore the said plaintiffs say, that the said parishioners are injured, and have sustained damage to the value of forty pounds; and therefore they bring their suit.

Declaration by the churchwardens of A. against their predecessor, for money received by him for the use of the parishioners.

WHEREAS

Declaration for the cure of defendant's servant of a broken leg, at the request of defendant's wife, in his absence.

WHEREAS the said defendant, on, &c. at, &c. was indebted to the said plaintiff in the sum of thirty pounds of lawful money of Great Britain, as well for divers medicines, cordials, ointments, plaisters, fermentations, and other necessaries, before that time found, provided, applied, and administered, by the said plaintiff, at the special instance and request of A. B. the wife of the said defendant, in his absence, in and about the healing, setting, and curing the broken legs of one G. R. then the servant of the said defendant, whereof the said G. R. before that time, and whilst he was the servant of the said defendant, laboured and languished, and which said legs were broken by misfortune in and during the said G. R.'s said service of the said defendant, as for the work and labour of the said plaintiff in and about the administering and applying of the said medicines, cordials, &c. and other necessaries, to the said G. R. the servant of the said defendant, by the said plaintiff done and performed; and being so indebted, &c. And whereas, &c. (*quantum meruit* to ditto) And whereas, &c. (add two other Counts at the request of defendant).

Declaration against an executor at the suit of an attorney, for his fees and disbursements,

MIDDLESEX, to wit. Sarah Parker, executrix of the last will and testament of R. P. her late husband, deceased, was attached, by a writ of privilege of our sovereign lord the king, issuing out of the court here, to answer J. G. gent. one of the attornies of the court of common bench of the said king, according to the liberties and privileges of the said court for attornies of the said court, used and approved of in the said court from time immemorial, of a plea of trespass on the case; and whereupon the said J. G. in his own proper person complains: that whereas the said R. P. in his life-time, to wit, on, &c. at, &c. was indebted unto the said J. G. in seven pounds of lawful money of Great Britain, for so much money by the said John before that time paid, laid out, and expended, as attorney and solicitor for the said R. P. and upon his retainer, in prosecuting and defending divers suits at law and in equity in this court here, and other his majesty's courts of record at Westminster aforesaid, and for his fees and labour, care and diligence, in prosecuting and defending those suits, and also for other the work and labour, care and diligence, of the said John before that time done, performed, and bestowed by the said John in and about other the business of the said R. P. and at his special instance and request; and being so indebted, he the said R. P. in his lifetime afterwards, to wit, on, &c. in consideration thereof, undertook, and then and there faithfully promised the said J. G. to pay him the said sum of money, when he the said R. P. should be thereto afterwards requested: And whereas afterwards, to wit, on, &c. at, &c. in consideration that the said J. G. at the like special instance and request of the said R. P. in his lifetime, and upon his retainer, had before that time prosecuted and defended divers other suits at law and in equity in this court here and other his majesty's courts of record at Westminster aforesaid, as attorney or solicitor of the said Robert, and at the like special instance and request of the said R. P. in his lifetime had

wrote

wrote and done divers other businesses for the said R. P. he the said R. P. in his lifetime undertook, and then and there faithfully promised the said J. G. to pay him so much money as he therefore reasonably deserved to have for his fees and labour, care and diligence, in this behalf, and also all such sums of money which the said John, on occasion of the prosecuting and defending the said suits last-mentioned, and doing the said business last aforesaid, had paid, laid out, and expended, when he the said R. P. should be thereto afterwards requested: And the said John avers, that he the said John, for his fees and labour, care and diligence, in this behalf, deserved to have of the said R. P. in his life-time other seven pounds of like lawful money, and on occasion of the prosecuting and defending the said suits last-mentioned, and doing the said other businesses last-mentioned, had paid, laid out, and expended other seven pounds of like lawful money, to wit, at, &c.; whereof the said R. P. in his life-time then and there had notice: Yet the said R. P. in his lifetime, and the said S. P. after his death, not regarding his said several promises and undertakings of the said R. P. in his lifetime in form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said John in this behalf, hath not yet paid the said several sums of money, or any part thereof (although to do this the said R. P. in his lifetime afterwards, to wit, on, &c. and the said S. P. after the death of the said R. P. to wit, on, &c. at, &c. was requested); but to pay the same to the said John he the said Robert in his lifetime wholly refused, and the said S. P. since his death hath hitherto wholly refused, and still doth refuse to pay the same, to the damage of the said John of seven pounds; and therefore he brings his suit, &c.

LONDON, to wit. Thomas Mitchell, assignee of the debts, goods, and effects, which were of Thomas Walker and Ann Singleton, bankrupts, according to the form of the statutes made and now in force concerning bankrupts, complains of Samuel Farmer, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself; for that whereas the said Samuel, on the first day of November 1780, at London aforesaid, to wit, in the parish of St. Mary-le-Bow in the ward of Cheap, was indebted to the said Thomas Mitchell, as assignee as aforesaid, and also one John Price, who was then assignee of the debts, goods, and effects of the said Thomas Walker and Ann Singleton with the said Thomas Mitchell (and which said John Price has been since removed from being such assignee by virtue of an order of the lord high chancellor), in the sum of five thousand pounds of lawful money of Great Britain, for divers goods, wares, and merchandizes by the said Thomas Mitchell and John Price, as assignees as aforesaid, before that time sold and delivered to the said Samuel, at his special instance and request; and being so indebted, he the said Samuel, in consideration thereof, afterwards, and before the removal of the said John Price as aforesaid, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid,

Declaration by the remaining assignee of a bankrupt against defendant, for goods sold by the bankrupt to the defendant. Counts also for the use and occupation of a house.

aforefaid, undertook, and to the faid Thomas Mitchell and John Price, as affignees as aforefaid, then and there faithfully promifed, to pay to them the faid fum of money, when he the faid Samuel fhould be thereunto afterwards requested: And whereas alfo afterwards, and before the removal of the faid John Price as aforefaid, to wit, on the fame day and year aforefaid, at London aforefaid, in the parifh and ward aforefaid, in confideration that the faid Thomas Mitchell and John Price, as affignees as aforefaid, had before that time, at the like inftance and request of the faid Samuel, fold and delivered to the faid Samuel divers other goods, wares, and merchandizes, he the faid Samuel undertook, and to the faid T. M. and J. P. affignees as aforefaid, then and there faithfully promifed, to pay to them fo much money as the laft-mentioned goods, wares, and merchandizes, at the time of the fale and delivery thereof, were reasonably worth, when he the faid Samuel fhould be thereunto afterwards requested: And the faid Thomas Mitchell in fact faith, that the faid laft-mentioned goods, wares, and merchandizes, at the time of the fale and delivery thereof, were reasonably worth other five thoufand pounds of lawful money, to wit, at London aforefaid, in the parifh and ward aforefaid; whereof the faid Samuel afterwards, and before the removal of the faid J. P. to wit, on the fame day and year, there had notice. And whereas, &c. (two other Counts like the preceding, for the ufe and occupation of divers to wit, forty meffuages, buildings, and erections, and alfo for the ufe and hire of divers utensils and neceffary things, with the appurtenances, of the faid T. M. and J. P. fuitate, ftanding, and being at Batterfea in the county of Surry): Yet the faid Samuel, not regarding his faid feveral promifes and undertakings fo made as aforefaid, but contriving and fraudulently intending craftily and fubtilly to deceive and defraud the faid T. M. and J. P. before the removal of the faid J. P. and the faid T. M. after the faid J. P. was removed, in this behalf, hath not paid to the faid T. M. and J. P. before the removal of the faid J. P. or to the faid T. M. fince the removal of the faid J. P. the faid feveral fums of money, or any part thereof (although fo to do he the faid Samuel afterwards, to wit, on, &c. at, &c. was by the faid T. M. and J. P. requested); but to pay the fame, or any part thereof, to the faid T. M. and J. P. before the removal of the faid J. P. or to the faid T. M. fince the removal of the faid J. P. he the faid Samuel hath hitherto altogether refufed, and ftill doth refufe, to pay the fame to the faid T. M. And whereas alfo he the faid Samuel afterwards, to wit, on, &c. at, &c. was indebted to the faid T. M. in the further fum of five thoufand pounds of like lawful money, for divers other goods, wares, and merchandizes by the faid T. M. as affignee as aforefaid, and by one other J. P. who was alfo affignee of the debts, goods, and effects of the faid T. W. and A. S. with the faid T. M. but who has fince been duly difcharged from being an affignee as aforefaid, before that time fold and delivered, at his like inftance and request, he the faid Samuel, in confideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. (*Quantum valebant*

valebant in consideration that the said T. M. and J. P. as assignees as aforesaid, had, before the said J. P. was so discharged from being an assignee as aforesaid, at the like instance and request of the said Samuel, sold and delivered to the said Samuel divers other goods, wares, and merchandizes, he the said Samuel undertook, &c. Add two other Counts for the use of the houses and utensils like the two last Counts; money had and received, &c. with common breach to the five last promises; damage, &c.)

MIDDLESEX, to wit. If Enos —, John Pineger, Thomas Gadhill, and Richard Rankin, assignees of the debts, goods, and effects which were of John Capstack, surviving partner of James Capstack, deceased, being a bankrupt, according to the form and effect of the several statutes made and now in force concerning bankrupts, shall make you secure, &c. then put by gages and safe pledges Richard Pocock, late of, &c. that he be before our lord the king in eight days of St. Hilary wheresoever, &c. to shew: for that whereas the said R. P. heretofore, to wit, on, &c. at, &c. was indebted to the said J. C. and J. C. (which said J. C. died before the bankruptcy of the said J. C. leaving him the said J. C. then surviving), in the lifetime of the said J. C. and before the said J. C. became bankrupt, in one hundred and thirty pounds of lawful money of Great Britain, for the work and labour of the said J. C. and J. C. before that time done and performed for the said R. P. at his special instance and request, and for divers materials and necessary things used and employed in and about that work and labour before that time found and provided by the said J. C. and J. C. at the like instance and request of the said J. C.; and being so indebted, he the said R. P. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said J. C. and J. C. in the lifetime of the said J. C. and before the said J. C. became a bankrupt, to pay them the said sum of money when he the said R. P. should be thereto afterwards requested. And whereas afterwards, in the lifetime of the said J. C. and before the said J. C. became bankrupt, to wit, on, &c. at, &c. in consideration that the said J. C. and J. C. at the like instance and request of the said R. P. had before that time done and performed other work and labour for the said R. P. and had also found and provided divers other materials and necessary things used and employed in and about the said last-mentioned work and labour, he the said R. P. undertook, and then and there faithfully promised the same J. C. and J. C. in the lifetime of the said J. C. and before the said J. C. became bankrupt, to pay them so much money as they therefore reasonably deserved to have, when he the said Richard should be thereto afterwards requested: And the said plaintiffs, assignees as aforesaid, in fact say, that the said J. C. and J. C. in the lifetime of the said J. C. and before the said J. C. became bankrupt, therefore reasonably deserved to have had of the said R. P. the further sum of one hundred and thirty pounds of like

Præcipe for declaration by the assignees of a bankrupt (who had been in partnership with one A. B. since dead), for work and labour, and for divers materials found in the lifetime of A. B. and for goods sold.

lawful

Goods sold and
delivered.

Quantum solvitur
bonis.

Conclusion.

Account stated.

lawful money, to wit, at, &c. ; whereof the said R. P. afterwards, to wit, on, &c. there had notice. And whereas the said R. P. afterwards, to wit, on, &c. at, &c. was indebted to the said J. C. and J. C. in the lifetime of the said J. C. and before the said J. C. became bankrupt, in the further sum of one hundred and thirty pounds of like lawful money, for divers goods, wares, and merchandizes before that time sold and delivered by the said J. C. and J. C. to the said R. P. at his like instance and request ; and being so indebted, he the said R. P. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said J. C. and J. C. in the lifetime of the said J. C. and before the said J. C. became bankrupt, to pay them the said sum of money, when he the said R. P. should be thereto afterwards requested. And whereas afterwards, in the lifetime of him the said J. C. and before the said J. C. became bankrupt, to wit, on, &c. at, &c. in consideration that the said J. C. and J. C. had before that time sold and delivered to the said R. P. divers other goods, wares, and merchandizes to the said R. P. at his like instance and request, he the said R. P. undertook, and then and there faithfully promised the said J. C. and J. C. in the lifetime of the said J. C. and before the said J. C. became bankrupt, to pay them so much money as the said goods, wares, and merchandizes, at the time of the sale and delivery thereof, were reasonably worth, when he the said R. P. should be thereto afterwards requested : And the said plaintiffs, assignees as aforesaid, in fact say, that the said last-mentioned goods, wares, and merchandizes, at the time of the sale and delivery thereof, were reasonably worth other one hundred and thirty pounds of like lawful money, to wit, at, &c. ; whereof the said R. P. afterwards, to wit, on, &c. there had notice : Yet the said R. P. not regarding his said several promises and undertakings, so by him made in manner and form as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said J. C. and J. C. in the lifetime of the said J. C. and the said J. C. after the death of the said J. C. and before the said J. C. became bankrupt, and the said plaintiffs, assignees as aforesaid, since the bankruptcy of the said J. C. in this behalf, hath not paid the said several sums of money, or any part thereof, to them, or any or either of them (although to pay the same the said R. P. was oftentimes requested, as well by the said J. C. and J. C. in the lifetime of the said J. C. as by the said J. C. after the death of the said J. C. and before the said J. C. became bankrupt, and also by the said plaintiffs, assignees as aforesaid, since the bankruptcy of the said J. C. to wit, on, &c. at, &c.) ; but to pay the same to them, or any or either of them, he the said R. P. hath hitherto wholly refused, and still refuses to pay the same to the said plaintiffs, assignees as aforesaid. And whereas the said R. P. after the death of the said J. C. and before the said J. C. became bankrupt, to wit, on, &c. at, &c. accounted together with the said J. C. as surviving partner of the said J. C. of and concerning divers other sums of money before that time due and owing from the said R. P. to the said J. C. and J. C. in the life-
time

time of the said J. C. and then being in arrear and unpaid, and upon that account the said R. P. was then and there found in arrear and indebted to the said J. C. as such surviving partner as aforesaid, in the sum of one hundred and four pounds of like lawful money; and being so found in arrear and indebted, he the said R. P. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said J. C. as such surviving partner as aforesaid, before he became bankrupt, to pay him the said sum of money last-mentioned, whenever, after the expiration of six months then next following, he the said R. P. should be thereto afterwards requested: Yet the said R. P. not regarding his said last-mentioned promise and undertaking, so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said J. C. as such surviving partner as aforesaid, before he became bankrupt, and the said plaintiffs, assignees as aforesaid, since the bankruptcy of the said J. C. in this behalf, hath not paid the said last-mentioned sum of money, or any part thereof, to them, or any or either of them (although to pay the same he the said R. P. was requested by the said plaintiffs, assignees as aforesaid, afterwards, and after the expiration of the said six months, and since the bankruptcy of the said J. C. to wit, on, &c. at, &c.); but to pay the same he the said R. P. hath hitherto wholly refused, and still refuses, to the damage of the said plaintiffs, assignees as aforesaid, of one hundred and thirty pounds, as it is said.

MIDDLESEX, to wit. Domingo Felles, late of Maxwell-street, in the county of Middlesex, merchant, and Joze Antonio Ferroize, late of Saint Martin's-lane, in the same county, gentleman, were attached to answer unto Lewis Gevaux in a plea of trespass upon the case, &c.; and thereupon the said William Lewis, by W. Loveridge his attorney, complains: that whereas the said Domingo and Joze Antonio, together with one Charles Alder, late of Westminster, in the said county of Middlesex, gentleman, formerly a partner and joint dealer with them the said D. and J. A. (which said Charles Alder hath been, and now is, in due manner outlawed in the court of our lord the now king before the king himself here), on the second day of December, in the year of Our Lord 1776, to wit, at Westminster, in the county of Middlesex aforesaid, were indebted to the said Lewis in one hundred and twenty pounds of lawful money of Great Britain, for divers goods, wares, and merchandizes by the said Lewis before that time sold and delivered to the said D. and J. A. and to the said C. A. who hath been and is so outlawed as aforesaid, and at their special instance and request; and being so indebted, they the said D. and J. A. and the said C. A. who hath been and is so outlawed as aforesaid, in consideration thereof, afterwards, and before the outlawry of the said C. A. to wit, on the same day and year aforesaid, at Westminster aforesaid, undertook, and faithfully promised the said Lewis, to pay

Declaration against defendants, who, together with one A. B. who is outlawed, were in partnership, for goods sold, money lent, &c. &c.

ASSUMPSIT.—AGAINST PARTNERS.

*Quantum val-
deant.*

Money lent and
advanced.

Conclusion.

pay him the said sum of money, when they should be thereto afterwards requested. And whereas afterwards, to wit, on the same day and year, at Westminster aforesaid, in consideration that the said Lewis, at the like special instance and request of the said D. and J. A. and of the said C. A. who hath been and is so outlawed as aforesaid, had before that time sold and delivered to the said D. and J. A. and to the said C. A. who hath been and is so outlawed as aforesaid, divers other goods, wares, and merchandizes, they the said D. and J. A. and C. A. afterwards, and before the outlawry of the said Charles, to wit, on the same day and year aforesaid, at Westminster aforesaid, undertook, and faithfully promised the said Lewis, to pay him so much money as he therefore reasonably deserved to have, when they the said D. and J. A. and the said C. A. who hath been and is so outlawed as aforesaid, should be thereto afterwards requested: And the said Lewis avers, that he therefore reasonably deserved to have of the said D. and J. A. and of the said C. A. who hath been and is so outlawed as aforesaid, other twelve hundred pounds of like lawful money, to wit, at Westminster aforesaid; whereof the said D. J. A. and C. A. who hath been and is so outlawed as aforesaid, afterwards, to wit, on the same day and year aforesaid, there had notice. And whereas the said D. and J. A. and the said C. A. who hath been and is so outlawed as aforesaid; afterwards, to wit, on the same day and year, at Westminster aforesaid, were indebted to the said Lewis in other one hundred and twenty pounds of like lawful money, for money by the said Lewis before that time lent and advanced to the said D. and J. A. and the said C. A. who hath been and is so outlawed as aforesaid, and at their like special instance and request; and for other monies by the said Lewis before that time laid out, expended, and paid for the said D. and J. A. and the said C. A. who hath been and is so outlawed as aforesaid, and at their like special instance and request; and for other money by the said D. and J. A. and the said C. A. who hath been and is so outlawed as aforesaid, before that time had and received to the use of the said Lewis; and being so indebted, they the said D. and J. A. and the said C. A. who hath been and is so outlawed as aforesaid, in consideration thereof, afterwards, and before the outlawry of the said C. A. to wit, on the same day and year, at Westminster aforesaid, undertook, and faithfully promised the said Lewis, to pay him the said last-mentioned sum of money, when they should be thereto afterwards requested: Yet the said D. and J. A. and the said C. A. who hath been and is so outlawed as aforesaid; before the outlawry of the said C. A. and the said D. and J. A. since the said outlawry, not regarding the said several promises and undertakings so made in this behalf as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Lewis in this behalf, have not, nor hath either of them, as yet paid the said several sums of money, or any part thereof to the said Lewis (although to do this they the said D. and J. A. and the said C. A. who hath been and is so outlawed as aforesaid, before the outlawry of the said C. A. to wit, on the same day and year aforesaid,

said, at Westminster aforesaid, were requested by the said Lewis; and although the said D. and J. A. have been thereto severally requested by the said Lewis since the said outlawry of the said C. A. to wit, on the first day of January in the year of Our Lord 1778, and often both before and afterwards, to wit, at Westminster aforesaid; but they to do this have, and each of them hath, hitherto wholly refused, and the said D. and J. A. still do, and each of them doth, wholly refuse so to do: wherefore the said Lewis saith he is injured, and hath sustained damage to the value of one hundred and twenty pounds; and therefore he brings his suit, &c.

MIDDLESEX, to wit. A. H. widow, administratrix of all and singular the goods and chattels, rights and credits, which were of R. H. her late husband, deceased, at the time of his death, who died intestate, complains of P. S. and M. his wife, late M. B. spinster, which said M. is executrix of the last will and testament of A. B. widow, her late mother, deceased, who was in her lifetime, and at the time of her death, executrix of the last will and testament of F. D. widow, deceased, who was in her lifetime, and at the time of her death, executrix of the last will and testament of C. D. deceased, being in the custody of the marshal of the marshalsea of our sovereign lord the king, before the king himself, in a plea of trespass on the case: for that whereas the said C. D. in his lifetime, to wit, on, &c. at, &c. was indebted to the said R. H. in his lifetime in one hundred pounds of lawful money of Great Britain, for the work and labour, care and diligence, of the said R. H. in his lifetime, before that time done, performed, and bestowed in and about the healing and curing of the said C. D. in his lifetime, and divers other persons of the family of the said C. D. of divers diseases and maladies under which he and they had laboured and languished, and at the special instance and request of the said C. D. in his lifetime, and for divers medicines, medicinal potions, plaisters, and other necessary things, before that time found and provided, administered and applied, by the said R. H. in his lifetime, in and about that particular, and at the like special instance and request of the said C. D. in his lifetime; and being so indebted, he the said C. D. in his lifetime, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said R. H. in his lifetime, to pay him the said sum of money, when he the said C. D. should be thereto afterwards requested. And whereas, &c. (add a *quantum meruit* accordingly). And whereas, &c. (this Count for work and labour as a surgeon or apothecary, in visiting of and prescribing other medicines, physic, &c. to, &c. labour, &c. And whereas, &c. (*quantum meruit* accordingly). And whereas, &c. (for goods sold and delivered). And whereas, &c. (money laid out, &c.; and conclude as at the suit of an administratrix).

Declaration for
agency as an
attorney.

Quantum meruit.

FOR the work and labour, care and diligence, of the said plaintiff, by him the said plaintiff before that time done, performed, and bestowed for the said defendant; as his agent, in the doing, performing, and bestowing, of certain affairs and business wherein he said defendant had been and was retained and employed to act as an attorney at law and otherwise, at the special instance and request of said defendant, and also for money by the said plaintiff before that time laid out, expended, and paid for the said defendant, in the course of such agency or business, at the like special instance and request; and being so indebted, &c. in consideration that said plaintiff, at the like special instance and request of said defendant, had before that time done, &c. other his work, &c. for the said defendant as his agent, in the doing, performing, and transacting, of certain affairs and business wherein said defendant had been and was retained and employed as an attorney at law and otherwise, he said defendant undertook, &c. : And said plaintiff avers, &c. (Count for work and labour; money laid out, &c.)

V. LAWES.

Declaration for
an equal moiety
for building a
party-wall built
by plaintiff be-
tween his and
defendant's
ground, and
used by the
defendant.

FOR that whereas said defendant, on, &c. at, &c. was indebted to said plaintiff in one hundred pounds of lawful money of Great Britain, being an equal expence for building a certain party-wall before then erected and built by said plaintiff, at, &c. between certain grounds of him said plaintiff there and certain grounds of said defendant there, and next adjoining thereto, and which said party-wall had before then been made use of by the said defendant as a party-wall; and in the further sum of one hundred pounds of like lawful money, being one equal moiety of the expence of building of a certain other party-wall before then erected and built by said plaintiff, at, &c. between certain buildings of said plaintiff and certain buildings of said defendant there, and which said last-mentioned wall had been also before then made use of by the said defendant as a party-wall; and being so indebted, &c.

Declaration for
not paying mo-
ney due on pre-
miums for assur-
ance.

LONDON, // The London Assurance Company complain of James Wadham, being, &c. : for that whereas the said James heretofore, to wit, on, &c. was indebted to the said London Assurance in one hundred and fifty pounds of lawful money of Great Britain, for certain premiums of assurance before that time and then due and payable from the said James to the said London Assurance, for and in respect of their having, at the special instance and request of the said James, before that time in due manner insured certain sums of money to the said James, upon divers goods, &c. of the said James before then laden and put on board certain ships or vessels; and being so indebted, he the said James, in consideration thereof, afterwards, to wit, on, &c. undertook, &c. (2d Count, money laid out, paid, &c.; 3d Count, money lent and advanced; 4th Count, money had and received; an account stated; and common conclusion.)

And

And the said James Wadham, by James Fisher his attorney, comes and defends the wrong and injury when, &c. and saith, that the said London Assurance ought not to have or maintain their aforesaid action against him; because he saith, that the said several promises and undertakings in the said declaration mentioned (if any such were ever made) were, and each and every of them was, made by him the said James and one William Smith jointly, and not by him the said James solely; and that after the making of the said promises and undertakings, and before the exhibiting of the bill of the said London Assurance, to wit, on, &c. the said London Assurance, by their certain deed or writing of release, then and there made by them the said London Assurance to the said William Smith, and sealed with the common seal of the said London Assurance, and bearing date the day and year last aforesaid, for the considerations therein mentioned and contained, did remise, release, and for ever quit claim unto the said William Smith, his heirs, executors, and administrators, the said several promises and undertakings in the said declaration mentioned, and all and all manner of action or actions, cause and causes of action, suits, bills, bonds, writings obligatory, debts, dues, duties, accounts, sum and sums of money, judgments and executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both in law and equity, or otherwise howsoever, which they the said London Assurance ever or then had against the said William Smith, or which they the said London Assurance should or might, at any time or times thereafter, have claim, challenge, or demand, for or by reason or means of the said promises and undertakings, or any other matter, cause, or thing whatsoever, from the beginning of the world unto the day of the date of the said deed or writing of release, as by the said deed or writing of release, which is in the possession of the said William Smith, more fully appears; and this he the said James is ready to verify: wherefore he prays judgment if the said London Assurance ought to have or maintain their aforesaid action against him, &c.

V. LAWES.

LONDON, to wit. John Lee, late of, &c. and Emanuel Walker, late of, &c. were attached to answer William Mauduit in a plea of trespass on the case; and thereupon the said plaintiff, by A. H. his attorney, comes and gives the Court here to understand and be informed, that after the issuing of the original writ of the said plaintiff against them the said defendants, and before this day, the said Emanuel was in due manner outlawed in the court of our lord the king, before the king himself here, in this present action or suit, and so from thence hitherto hath been, and still continues, outlawed, which the said John doth not deny; and thereupon the said plaintiff, by his attorney aforesaid, complains against the said John: for that whereas he the said John, and one J. R. S. deceased, and Emanuel, and whom the said J. L. and Emanuel, who is so outlawed as aforesaid, have survived in the lifetime of the said

Declaration for goods sold and delivered, against two surviving partners, one of whom is outlawed.

J. R. S. to wit, on, &c. were indebted to the said plaintiff in one thousand pounds of lawful money of Great Britain, for divers goods, wares, and merchandizes, by the said plaintiff before that time sold and delivered to the said J. L. J. R. S. and E. who, &c. and at their special instance and request; and being so indebted, they the said J. L. J. R. S. and E. who, &c. afterwards, in the lifetime of the said J. R. S. to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money, when they the said J. L. J. R. S. and E. who, &c. should be thereto afterwards requested: And whereas afterwards, in the lifetime of J. R. S. to wit, on, &c. in consideration that the said plaintiff, at the like special instance and request of the said J. L. J. R. S. and E. who, &c. had before that time sold and delivered to the said J. L. J. R. S. and E. who, &c. divers other goods, wares, and merchandizes, they the said J. L. J. R. S. and E. who, &c. undertook, and then and there faithfully promised the said plaintiff, to pay him so much money as he therefore reasonably deserved to have, when they the said J. L. J. R. S. and E. who, &c. should be thereto afterwards requested: And the said plaintiff avers, that he therefore reasonably deserved to have of the said J. L. J. R. S. and E. who, &c. other one thousand pounds of like lawful money, to wit, at, &c. whereof the said J. L. J. R. S. and E. who, &c. afterwards, in the lifetime of the said J. R. S. to wit, on, &c. there had notice (Add the usual Count, and following conclusion): Yet the said J. L. J. R. S. and E. who, &c. not regarding, &c. but contriving, &c. have not, nor hath any, &c. although so to do the said J. L. J. R. S. and E. who, &c. before the said outlawry, was, had been, were, and each of them was, oftentimes requested: And the said J. L. since the said outlawry was had, hath been requested by the said plaintiff, as well in the lifetime of the said J. R. S. to wit, on, &c. as afterwards, to wit, at, &c.; but they to do this have hitherto wholly refused, and the said J. L. and E. who, &c. still refuses so to do; (Damage; suit.)

V. LAWES.

Declaration against defendant, for not paying for the nursing of his child.

MIDDLESEX, to wit. Henry Folkes complains of John Bukwith, being, &c.: for that whereas heretofore, to wit, on, &c. at, &c. in, &c. in consideration that the said Henry, at the special instance and request of the said John, would take a certain infant child of him the said John to nurse, and would find and provide it in nursing, and in meat, drink, washing, and other necessities, he the said John undertook, and then and there faithfully promised the said Henry, to pay him for the same the sum of four shillings and sixpence of lawful, &c. for each and every week that he should so find and provide the said child in such nursing, meat, drink, washing, and other necessities: And the said Henry in fact says, that he, confiding in the said promise and undertaking of the said John, so by him in manner and form aforesaid made, did after the making thereof, to wit, on, &c. at, &c. take the said infant child of the said John to nurse, and hath always from thence hitherto found and provided it in nursing, and in meat, drink, washing, and other necessities,

faries: And the said Henry in fact further says, that on, &c. a large sum of money, to wit, the sum of fourteen pounds of lawful, &c. at and after the rate of four shillings and sixpence for each and every of divers, to wit, sixty-five weeks, during which time he the said Henry found and provided the aforesaid infant child of the said John in nursing, meat, drink, washing, and other necessaries, and ending and ended on the day and year last aforesaid, became due, owing, and payable by and from the said John to the said Henry, according to the tenor and effect of the aforesaid promise and undertaking of the said John; whereof the said John afterwards, and before the exhibiting the bill of the said Henry, to wit, on, &c. at, &c. had notice: Yet the said John, not regarding, &c. but contriving, &c. the said Henry in this behalf, hath not as yet paid the said sum of fourteen pounds, or any part thereof, to the said Henry (although so do he the said John was requested by the said Henry afterwards, to wit, on, &c. at, &c.; but he so to do hath hitherto wholly refused, and still refuses so to do. And whereas the said John afterwards, to wit, on, &c. at, &c. was indebted to the said Henry in thirty-five pounds of like, &c. for meat, &c. by the said Henry before that time found and provided for a certain other infant child, at the like special instance and request of the said John; and being so indebted, &c. And whereas afterwards, to wit, on, &c. in consideration that the said Henry, at the like special instance and request of the said John, had before that time found and provided a certain other infant child other meat, &c. he the said John undertook, &c.; And the said Henry avers, &c. And whereas, &c. (for work and labour, and also the other common Counts; and common conclusion.)

LONDON, to wit. John Hodges complains of Jacob Lindo (arrested by the name of John Lindo), being in the custody of, &c.: for that whereas the said Jacob heretofore, to wit, on, &c. at, &c. was indebted to the said J. H. in a certain large sum of money, to wit, the sum of two thousand two hundred and twenty pounds of lawful money of Great Britain, for a certain large quantity or portion, to wit, three thousand pounds, of and in a certain public fund or stock of this kingdom, commonly called the three per cent. consolidated annuities, by the said J. H. before that time bargained and sold to the said J. L. and under and in pursuance of that sale transferred, at the special instance and request of the said J. L.; and being so indebted, he the said Jacob in consideration thereof, afterwards, to wit, on, &c. undertook, &c. &c. And whereas afterwards, to wit, on, &c. in consideration that the said J. H. at the like special instance and request of the said J. L. had before that time sold to the said J. L. and pursuant to such sale transferred, a certain other quantity or portion, to wit, three thousand pounds, of and in a certain other public stock or fund of this kingdom, commonly called, &c. he the said Jacob undertook, &c. to pay him so much money as he therefore reasonably deserved to have, when he the said J. L. should

Declaration in
B. R. for 3000l.
stock sold and
transferred to
defendant, ar-
rested by the
name of John
instead of Jacob.

should be thereto afterwards requested : And the said John avers, &c. (add all the common Counts ; account stated ; and common conclusion.)

V. LAWES,

Count in a declaration on defendant's promise to indemnify plaintiff for entering into a recognizance for defendant's appearance at the next quarter sessions to answer a complaint alleged against him by his wife, against defendant, for not indemnifying, &c.

WHEREAS, on the eighth of December 1760, at Penrith aforesaid, in consideration that the said A. at the special instance and request of the said B. had, before M. H. esquire, then one of the justices of our Lord the king assigned to keep the peace of our said Lord the king in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, entered into a recognizance in a large sum of money, to wit, the sum of pounds, with a condition for the appearance of the said B. at the then next general quarter sessions of the peace to be holden for the said county, to answer a complaint of Ann the wife of the said John, of a battery alleged by her to have been made by the said B. upon her the said Ann, he the said B. undertook, and then and there faithfully promised the said A. that the said B. would indemnify and save harmless the said A. against the said recognizance, and all costs, charges, and damages that might happen to arise to him thereby or thereon, or by reason or means thereof : And the said A. in fact says, that the next general quarter sessions of the peace holden in and for the said county, after the making of the said promise and undertaking, was holden on the fourteenth of January 1761, to wit, at P. aforesaid : Yet the said B. not regarding, &c. hath not indemnified or saved harmless the said A. against the said recognizance, and all or any costs or charges or damages which arose to him by means thereof, either by appearing at the said general quarter sessions, to answer the above mentioned complaint according to the form and effect of the condition of the said recognizance, or in any other manner whatsoever, but hath altogether neglected and refused so to do ; by means whereof the said A. hath been put unto great trouble, and hath been forced to lay out and expend, and hath laid out and expended, a large sum of money, to wit, twenty pounds, in and about obtaining the discharge from the said recognizance, and the said A. hath, on that occasion, suffered great injury and damage, to wit, to the amount of forty pounds, that is to say, at P. : whereupon,

J. WALLACE,

See *Assumpsit to Indemnify*, Vol. II.

Declaration by an administratrix against an administrator, on his promise, in consideration of assets, to pay plaintiff a debt due from defendant's intestate to plaintiff's intestate at the time of their deaths.

CORNWALL, to wit. F. T. late of the borough of Truro, in the said county of Cornwall, farmer, was attached to answer E. P. in a plea of trespass on the case, &c. ; and thereupon the said Elizabeth, by A. B. her attorney, complains ; for that whereas one S. T. in his lifetime was indebted to one J. P. in divers large sums of money, for divers goods, wares, and merchandizes, by the said J. before that time sold and delivered to the said Stephen, at his special instance and request : And whereas, after the death of the said

J. Potter,

J. Potter, to wit, on the seventh of May 1770, administration of all and singular the goods, chattels, and credits which were of the said J. P. at the time of his death, who died intestate, was in due form of law granted by John Slack, archdeacon of the archdeaconry of Cornwall, to whom the granting that administration of right belonged, to the said E. to wit, at aforesaid: And whereas also, after the death of the said S. administration of all and singular the goods, chattels, rights, and credits which were belonging to the said S. at the time of his death, at Bodmin aforesaid, in the county aforesaid, in due form of law was granted to the said Francis: And whereas, after the granting the administration to the said Elizabeth and F. respectively, to wit, on the twenty-ninth of May 1772, at B. aforesaid, in the county aforesaid, the said several sums of money due from the said Stephen being wholly unpaid to the said J. P. in his lifetime, as to the said Elizabeth administratrix as aforesaid; and after his death an account was had and stated between the said Elizabeth, administratrix as aforesaid; and the said Francis, as administrator as aforesaid, was found in arrear, and indebted to the said Elizabeth, as administratrix as aforesaid, in the sum of of, &c. to wit, at B. aforesaid, in the county aforesaid: And whereas the said F. as such administrator as aforesaid, before the stating of the said account, had received and become possessed of, and at the time of stating of the said account had in his hands divers goods, chattels, and effects which were of the said Stephen at the time of his death, to the value of, &c. and more, which were liable to the payment and discharge of the said debt due to the said Elizabeth, as administratrix of the said J. P. as aforesaid; and by reason thereof the said Francis became liable to pay to the said Elizabeth the said sum of pounds, when he the said F. should be thereto afterwards requested; and being so liable, he the said F. in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at B. aforesaid, in the county aforesaid, undertook, and to the said E. then and there faithfully promised to pay to her the said sum of when he the said F. should be thereto afterwards requested: And whereas the said Francis, administrator as aforesaid, afterwards, to wit, on the same day and year last aforesaid, at aforesaid, in the county aforesaid, accounted with the said Elizabeth, as administratrix as aforesaid, of and concerning divers sums of money from the said F. as administrator as aforesaid, to the said E. as administratrix as aforesaid, before that time due and owing, and then being in arrear and unpaid; and upon that account the said F. as administrator as aforesaid, was then and there found in arrear to the said Elizabeth, as administratrix as aforesaid, in the sum of pounds, of, &c.; and being so found in arrear to the said Elizabeth, he the said F. in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at B. aforesaid, undertook, and to the said E. then and there faithfully promised, to pay to her the said last-mentioned sum of money, when he the said F. should be thereto afterwards requested; Yet the said F. although often requested, hath not yet paid to the said Elizabeth the said several sums

sums of money, or any part thereof; but to pay the same to the said Elizabeth the said Francis hath hitherto altogether refused, and still doth refuse: whereupon the said Elizabeth says she is injured, and hath sustained damage to the value, &c. and therefore she brings suit, &c. and the said Elizabeth brings here into court the said letters of administration granted to her the said E. of the goods, chattels, and credits of the said J. P. which witness the commission of the said administration to the said E. in form aforesaid, the date whereof is the same day and year in that behalf aforesaid.

FOSTER BOWER.

Precept by surviving partner against defendant, for work and labour in carrying goods, &c. done in the lifetime of both partners.

WILTSHIRE, to wit. If T. C. shall give you security to prosecute his suit, then put by sure and safe pledges A. A. late of S. in the county of W. esquire, that he be before our lord the king on the morrow of All Souls, wheresoever our said lord the king shall then be in England, to shew: for that whereas the said A. on the twentieth of January 1783, at Wilton, in the said county of W. was indebted to the said T. and one W. C. since deceased, whom he the said T. hath survived, in the sum of pounds of lawful money of Great Britain, for the work and labour, care and diligence, of the said T. and W. since deceased, in his lifetime, by themselves and their servants, and with their horses, mares, and geldings, and other cattle, and waggons, carts, and carriages, by them the said T. and W. since deceased, before that time done, performed, and bestowed, at the special instance and request of the said A. in and about the carrying, conveying, and delivering of divers goods, chattels, wares, and merchandizes of and for the said A. from S. aforesaid to London, and from London aforesaid to S. aforesaid, and from and to divers other parts and places; and being so indebted, he the said A. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and to the said T. and W. since deceased, in the lifetime of the said W. then and there faithfully promised, to pay to them the said sum of money, whenever he the said A. should be thereto afterwards requested: And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said Thomas and W. deceased, in the lifetime of the said W. at the like instance and request of the said A. had, by themselves and their servants, and with their horses, mares, geldings, and other cattle, and with waggons, carts, and carriages, before that time done, performed, and bestowed other their work and labour, care and diligence, of and for the said A. in and about the carrying, conveying, and delivering of divers other goods, chattels, wares, and merchandizes of and for the said A. from S. aforesaid to L. aforesaid, and from L. aforesaid to S. aforesaid, and to divers other parts and places, he the said A. undertook, and to the said T. and W. since deceased, in his lifetime, then and there faithfully promised, to pay to them so much money as they reasonably deserved to have for the same, whenever he the said A. should be thereunto afterwards requested: And the said T. avers, that he the said T. and the said W. since deceased, in the lifetime of the said W. therefore reasonably

sonably deserved to have of and from the said A. the sum of other pounds of, &c. to wit, at, &c.; whereof the said A. afterwards, to wit, on, &c. had notice (Count for work and labour, and *quantum meruit*, lent and advanced, and paid, &c. had and received; account stated): Nevertheless the said A. not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said T. and W. since deceased, in his lifetime, and the said T. since the decease of the said W. whom he the said T. hath survived, in this behalf, hath not yet paid the said several sums of money, or any or either of them, or any part thereof, to the said T. and W. since deceased, in his lifetime, or to any or either of them, or to the said T. since the decease of the said W. (although often requested so to do); but to pay the same, or any or either of them, or any part thereof, to the said T. and W. since deceased, in his lifetime, or to either of them, or to the said T. after the decease of the said W. hath hitherto altogether refused, and still doth refuse, to the damage of the said T. of pounds, as it is said, &c. *Drawn by MR. GRAHAM.*

YORKSHIRE, to wit. T. W. late of, &c. yeoman, was attached to answer W. H. of a plea of trespass on the case, &c.; and thereupon the said W. by his attorney, complains: that whereas the said T. on the first of May 1768, at aforesaid, in the said county, was indebted to the said W. in the sum of ten pounds of, &c. for the use of divers bulls of the said W. before that time used for the bulling of divers cows of the said T. by the permission of the said W. and at the special instance and request of the said T.; and being so indebted, *assumpsit*, &c.: And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said W. at the special instance and request of the said T. had before that time permitted divers other bulls of the said W. to be bulling of divers other cows of the said T. and that the said last-mentioned bulls of the said W. had accordingly bulled the said last-mentioned cows of the said T. he the said T. undertook, &c. to pay to him so much money as he therefore reasonably deserved to have, when he the said William should be thereunto afterwards requested: And the said William in fact says, that he reasonably deserved to have of the said T. ten pounds of, &c. to wit, at, &c.; whereof the said W. afterwards, to wit, on, &c. had notice: (work and labour; *quantum meruit*; and other common Counts.)

Declaration for the use of a bull, for bulling defendant's cows.

JAMES WALLACE.

Defendant pleaded general issue. The action was originally commenced in the sheriff's town court, held by the sheriff of the county of York for his wapentake of , and plaintiff declared in like manner as above; to which declaration defendant put in a special plea, claiming a right of having cows bulled and served by plaintiff's bull, being the town bull, as defendant was possessed of

an estate in the township of C.; but upon the removal of this cause into the court of common pleas, by *accedas ad curiam*, defendant pleaded the general issue. The plaintiff wished to know whether, under this plea, defendant might give in evidence the right he claimed of being served by plaintiff's bull.

This action is founded upon contract, either expressed or implied. I do not find that

Opinion.

92 PLEAS IN ASSUMPSIT—COVERTURE—REPLICATION,

that there is any express agreement between the parties, and therefore the action must be maintained upon an implied one, which the law will raise to give a satisfaction to the plaintiff for the use of his bull, which the defendant has had for his cows, and therefore ought to make a recompence to the plaintiff. But this implied contract may be invalidated by evidence, that the defendant had a right to the use of the bull without pay-

ing any satisfaction, by proving, if the case will admit of it, the obligation on the plaintiff to keep a bull, and that he was intitled to the use of him; and this is proper evidence under the general issue in this action, and the whole merits may be tried upon the issue: the plaintiff must therefore, besides the proof of the bulling, have evidence to controvert the right, if defendant makes it necessary.

JAMES WALLACE.

Declaration for premiums on policies of insurance.

FOR that whereas, on the first of November 1788, at, &c. the said defendant was indebted to the said plaintiff in the sum of pounds of, &c. for certain rewards and premiums of insurance before that time due and payable from the said defendant to the said plaintiff for the underwriting and subscribing of divers policies of insurance, of, for, on the behalf, and on the account of the said defendant, before that time underwritten and subscribed by the said plaintiff for the insurance of divers large sums of money, upon the safe arrival of certain ships, goods, and merchandizes as therein mentioned, and particularly expressed, at the special instance and request of the said defendant; and being so indebted, &c. (2d Count, money paid, &c. lent and advanced, had and received, and an account stated; and breach) Drawn by MR. GRAHAM.

PLEAS IN ASSUMPSIT.

IN AVOIDANCE.

COVERTURE.

Plea.

AND the said Frances Holles, in her proper person, comes and defends the wrong and injury, when, &c. and says, *actio non*; because she says, that the said Frances, at the time of the making of the said promises and undertakings in the said declaration above specified, was and yet is the wife of and married to William lord viscount Holles Vane, which said William lord viscount Holles Vane is now living, to wit, at W. aforesaid, in the county aforesaid; and this, &c.: wherefore, &c. if, &c.

KINGSTEAD AND OTHERS

against

COUNTESS OF LANESBOROUGH,

PLEA, 1st, General issue.

2d, *Non assumpsit infra sex*

annos. 3d, *Cverture.*

Replication, that the defendant and her husband lived separate, to wit, the husband in Ireland and the defendant in England, and that by a deed of separation the had an allowance from the husband to the day of his death.

1st, Similitur to general issue. 2d, Issue on statute of Limitations: And the said plaintiffs, as to the said plea of the said defendant by her lastly above pleaded in bar says, *præcludi non*; because they say, that the said defendant and A. B. (the husband), long before the making of the said several promises and undertakings in the said declaration, to wit, on, &c. at, &c. were parted and separated, and lived separate and apart from each other, and always from thence, and until the time of the death of the said A. B. lived separate and apart from each other, to wit, the said A. B. in the king-

dom

SEPARATE MAINTENANCE, ELOPEMENT.

91

dom of Ireland, and the said defendant in England; and the said defendant during all that time, by a certain agreement of separation and maintenance for that purpose made and provided, had a large maintenance allowed and duly paid to her by the said A. B. for her separate support and maintenance; and this, &c.: wherefore, &c. and their damages by reason of the not performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to them, &c.

For that the matter contained in the said replication is not a legal answer to the plea of the said defendant, and that the said plaintiffs have not in their said replication set forth the date of the parties to the substance of the deed of separation and maintenance in the said replication, nor the amount of such pretended maintenance, nor when payable, nor have the plaintiffs brought into court the said deed or counterpart thereof; and for that the said replication offers to put in issue a matter foreign to the matter of bar pleaded by the said defendant; and for that the said replication is in other respects uncertain, &c.

Drawn by MR. CROMPTON.

A feme covert living apart from her husband, and having a separate maintenance, may contract and be sued as a feme sole. Corbett v. Poelnitz and Uxor. Durnford and East Rep. 5.

TURTLE } **AND** the said Benjamin prays a day to im-
against } parl to the said plea, and it is granted him, &c.; and thereupon a day is given to the parties afore-
LADY UNSLEY. } said to come before our lord the king, on, &c. that is to say, for the said Benjamin to imparl to the said plea, and then to reply to the same, &c.: at which day, before our lord the king at Westminster, came the parties afore-
said, by their attorneys afore-
said; and the said B. says, that notwithstanding anything above alledged by the said defendant, the said bill of the said B. ought not to be quashed, because he says, that she the said defendant, before the making of the several promises and undertakings in the said declaration mentioned, and before the exhibiting of the said bill of the said plaintiff, to wit, on, &c. at, &c. in, &c. voluntarily, and of her own accord, did elope from and absent herself from the said (husband) her said husband, and continually from that time until and at the times of the making of the several promises and undertakings in the said declaration mentioned, and of the exhibiting of the said bill of the said B. hitherto did, and still doth, absent herself, and lived separate and apart in adultery from her said husband, and hath not been, nor is yet reconciled to her said husband, to wit, at, &c. in, &c. and that whilst she the said defendant so absented herself and lived separate and apart in adultery from her said husband as afore-
said, she the said defendant made the several promises and undertakings in the said declaration mentioned upon her own credit, and for her own necessary use and account, solely and separately, in the manner of a feme sole, and not upon or for the use, credit, or account of her said husband, to wit, at,

(a) Replication (to a plea of co-verture), that defendant eloped from her husband before making the promises, and hath ever since lived in adultery.

This was the day when defendant eloped with one Blisset, against whom the husband brought an action, and had a verdict before this action was brought.

(a) This is a replication to a plea in abatement.

&c.

&c. : and this, &c. : wherefore he prays judgment, and that his said bill may be adjudged good, and that the said defendant may answer over thereto, &c.

Demurrer to the last replication.

And the said defendant, as to the said plea of the said Benjamin by him above pleaded, in reply to the said plea of the said defendant by her above pleaded in abatement, says, that the same plea, and the matters therein contained, are not sufficient in law to prevent the said bill from being quashed; to which said plea, in manner and form as the same is above pleaded in reply, she the said defendant hath no need, nor is she bound by the law of the land, to answer: wherefore, for want of a sufficient replication in this behalf, she the said defendant, as before, prays judgment, and that the same may be quashed, &c. ; and for causes of demurrer in law in this behalf, the said defendant, according to the form of the statute in such case made and provided, shews to the court here the causes following, to wit, for that the said plea of the said Benjamin above pleaded in reply is not an answer to the said plea of the said defendant, but a direct admission and confession of the fact therein alledged; and also for that the same plea, in manner and form as the same is above pleaded in reply, contains and endeavours to bring in issue several distinct matters; and for that the said replication is in other respects uncertain, insufficient, and informal, &c.

Joinder to ditto.

And the said Benjamin says, that the said plea of the said Benjamin, and the matters therein contained, are good and sufficient in law to compel the said defendant to answer to the aforesaid bill of the said B. against the said defendant; which said plea, and the matters therein contained, the said B. is ready to verify and prove as the said court shall award; and because the said defendant hath not answered, nor in any wise contradicted the same, he the said defendant, as before, prays judgment, and that the said defendant may be compelled to answer over to the said bill of the said B. ; But because the court of our lord the king, now here is not yet advised what judgment to give of and concerning the premises, a day is given to the parties aforesaid to come before our lord the king at Westminster, on next after to hear judgment thereon, for that the court of our lord the king here is not yet advised thereof, &c.

Argument for Plaintiff.

Elopement and adultery, and no reconciliation during the life of the husband will bar dower. Stat. Westm. 1. st. 1. c. 34. 2. Inst. 435.

Adultery pleaded in cases of dower, East. Ent. 230. pl. 9. Roll. Ent. 260.

If a wife elope from her husband, he shall not be liable even for necessaries after elopement. Salk. 118. Stra. 113. 875. 647. Sid. 191. Skinn. 323.

Upon argument of this case, Lord Mansfield said it was new, and therefore desired to hear civilians; but the cause being too trifling for plaintiff to expend money upon a further argument, he moved for judgment; and the Court gave it *quod respiciat causam*.

Argument for Defendant.

Notwithstanding elopement and adultery, she cannot be sued alone without her husband.

While husband living, not in exile or abjuration, wife cannot be sued alone. 2. Black. Rep. 1079. 1195.

AND

AND the said plaintiffs, as to the said plea of the said defendant by her secondly above pleaded in bar, says, *precludi non*; because protesting, that the said plea, in manner and form as the same is above pleaded and set forth, and the matters therein contained, are insufficient in law to bar the said plaintiffs from having the said action against her, protesting also; that the said defendant was not married to nor under coverture of the said R. B. in the plea mentioned, in manner and form as the said defendant hath in her said plea in that behalf alledged: Nevertheless, for replication in this behalf the said plaintiffs say, that the said defendant, before the making of the said several promises and undertakings in the said declaration mentioned, and before the making of any or either of them, and before the several causes of action in the said declaration mentioned, or any or either of them, accrued, that is to say, on, &c. at, &c. eloped from the said R. R. in the said plea mentioned; and that she hath from thence hitherto lived, and still doth live, separate and apart from the said R. R.; and that they the said plaintiffs did and performed the work and labour in the declaration mentioned for the said defendant, and at her request, and on her credit only; and that they sold the goods and merchandizes in the said declaration mentioned to the said defendant, and at her request and on her credit only; and that they laid out, expended, and paid the money in the last Count of the said declaration mentioned, for the said defendant, and at her request, and on her credit only, to wit, at, &c.; and this, &c.: wherefore, &c. &c.

J. MORGAN.

AND the said Charles and Robert, as to the said plea of the said dame by her above pleaded, say, that by reason of any thing by the said dame in that plea above alledged *precludi non*; because they say, that before and at the time of making the said several promises and undertakings in the said declaration mentioned, and from thence until and at the time of exhibiting the bill of them the said Charles and Robert against the said dame, she the said dame lived, and still doth live, separate and apart from the said Robert Robertson her husband; and that she the said dame had, for and during all the time aforesaid, and has, a large, ample, and sufficient allowance, as and for her separate maintenance, and which said allowance hath been, for and during all that time, paid to her the said dame, to wit, at, &c. aforesaid: And the said Charles and Robert further say, that the said dame, so living separate and apart from her said husband, and having such allowance as aforesaid, the said several promises and undertakings in the said declaration mentioned were, and each and every of them was, made by the said dame, as a *feme sole* upon her own separate credit, of her said husband, to wit, at, &c. aforesaid; and this they the said Charles and Robert are ready to verify: wherefore they pray judgment, and their damages by them sustained on occasion

Replication to a plea of coverture, protesting as to the sufficiency of the plea; protesting also, that the defendant is not a *feme covert*. Replication, that before the cause of action accrued the defendant had eloped from her husband, and that the work, &c. was done for the defendant at her request and on her credit only.

Replication to plea of coverture, admitting the coverture, but alledging that defendant lived apart from her husband, and had a separate maintenance.

of the not performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to them, &c.

WILLIAM GARROW.

DURESS.

Plea of duress of imprisonment, and that promissory note was obtained.

AND the said defendant, by his attorney, comes and defends the wrong and injury, when, &c. and says, that the said plaintiff *actio non*; because he saith, that he the said defendant, at the time of the making the said promissory note in the said first Count of the said declaration mentioned, and of the said first promise and undertaking thereupon, was imprisoned by the said plaintiff and others by his contrivance, to wit, at, &c. aforesaid, and was there kept and detained in prison until he the said defendant, by force and duress of that imprisonment, then and there made and subscribed the said promissory note in the said first Count of the said declaration mentioned, and the said first promise and undertaking to the said plaintiff thereupon; and this, &c.: wherefore, &c. if, &c. And the said defendant, as to the second, third, fourth, and fifth promises and undertakings in the said declaration mentioned, says *non assumpsit*; and of this he puts himself upon the country, &c.

Replication, that defendant was at large.

And the said plaintiff saith, that by anything above by the said defendant in pleading alledged, he ought not to be barred from having and maintaining his said action against him the said defendant; because he saith, that the said defendant, at the time of the making, &c. (as in the plea) was of his own accord at large, and out of any prison, and made, &c. &c. of his the said defendant's own accord and mere free will, and not by any force and duress of imprisonment of the said defendant, as the said defendant hath above in his said plea alledged; and this he the said plaintiff prays may be enquired of by the country, and the said defendant doth so likewise: therefore, &c.

R. DRAPER.

Plea by defendant in custody: 1st, *non-assumpsit*; 2d, duress of imprisonment. 3d Count, on a bill of exchange.

HUBARD } AND the said M. in his own proper person, comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said B. M. hath above thereof complained against him; and of this he puts himself upon the country; and the said B. M. doth so likewise. And for further plea in this behalf, as to the first promise and undertaking in the said declaration mentioned, he the said M. by the leave of the court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, says, that the said B. M. ought not to have or maintain his aforesaid action

tion thereof against him; because he says, that he the said M. before and at the time of the making of the said bill of exchange in the said declaration, was imprisoned by the said defendant and others in collusion with him, to wit, at London aforesaid, in the parish and ward aforesaid, and then and there continued under that imprisonment, and was then and there kept and detained in prison until he the said M. through the force and restraint of that imprisonment, there made and gave the said bill of exchange in the said declaration mentioned, to the said defendant; and this he is ready to verify: wherefore he prays judgment if the said B. M. ought to have or maintain his aforesaid action thereof against him, &c.

And the said B. M. as to the said plea of the said M. by him lastly above pleaded in bar, saith, that he, by reason of anything in that plea by the said M. alledged as to the said first promise and undertaking in the said declaration mentioned, ought not to be barred from having or maintaining his aforesaid action thereof against him; because he says, that the said M. at the time of the making the said bill of exchange in the said declaration mentioned, was free and at large, and not under any imprisonment; and that he the said M. made the said bill of exchange in the said bill of exchange mentioned, of his own free will, and not by force or restraint of imprisonment, as the said M. hath above alledged; and this he prays may be enquired of by the country, and the said M. does so likewise: therefore the sheriffs are commanded that they do cause to come here in three weeks of the Holy Trinity, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

This cause was tried before the Right Hon. Sir Charles Pratt, knt. Lord Chief Justice of the Court of Common Pleas, at Guildhall, London, on Saturday, day of July 1763, the last adjourned sitting after Trinity Term, 3. Geo. 3. by a special jury of merchants of the city

of London, and a verdict of 3000l. given for plaintiff, after several learned arguments by the counsel; who were, Mr. Serjeant Davy, Mr. Serjeant Bowles, and Mr. Serjeant Aspinall, for plaintiff; Mr. Serjeant Hewett, Mr. Serjeant Natch, and Mr. Serjeant Glynn, for defendant.

INFANCY.

AND now at this day, that is to say, on Wednesday next after fifteen days from the day of Easter in this same term, until which day, &c. as well the said Thomas by his said attorney as the said James by A. B. his guardian, who is admitted by the court here to defend for the said James, do come before our lord the king at Westminster; and the said James defends the wrong and injury, when, &c. and says, *actio non*; because he says, that he the said James, at the time of the making the said several promises in the said declaration

Plea of infancy, by guardian.

PLEA, INFANCY.—REPLICATION, NECESSARIES.

claration mentioned, was within the age of twenty-one years, to wit, of the age of nineteen years and no more; and this, &c. : wherefore, &c. if, &c.

FOSTER BOWER.

Replication to all the Counts, except the 9th, 11th, 12th, that the defendant was a lieutenant in the horse-guards, and the articles charged were suitable to his degree.

And the said Thomas, as to the said plea of the said James by him above pleaded in bar, as to the several promises and undertakings in the first, second, third, fourth, fifth, sixth, seventh, eighth, and tenth Counts of the said declaration mentioned, saith, that he, by reason of any thing by the said James in his said plea as to those several promises and undertakings above alledged, ought not to be barred from having or maintaining his aforesaid action thereof against him; because protesting, that the said James, at the time of the making of the said promises and undertakings herein above particularly mentioned, was not of full age, to wit, of the age of twenty-one years, as he the said James hath above in his said plea in that behalf above alledged. For replication in this behalf the said Thomas saith, that the said James, before and at the time of the making of the said several promises and undertakings, was a lieutenant in his majesty's horse-guards; and that the said stable in the first Count, and the stable in the second Count of the said declaration mentioned, were used and occupied by him the said James for the said space of time in those Counts mentioned; and that the said horse meat, stabling, care, and attendance in the fifth and sixth Counts of the said declaration mentioned, were found, provided, and bestowed by the said Thomas, for, in, and about the feeding and keeping of divers horses, mares, and geldings of him the said James; and that as well the said horses, mares, and geldings, as the said stables, horse meat, care, and attendance; and also the said horses, chaises, and other carriages, in the third and fourth Counts of the said declaration mentioned; and that the said goods, wares, and merchandizes, in the seventh and eighth Counts of the said declaration mentioned, were necessary and suitable to the estate and degree of the said James, to wit, at, &c. : And the said Thomas in fact further saith, that the money in the tenth Count of the said declaration mentioned was money laid out, expended, and paid by the said Thomas, for, in, and about the buying and providing for the said James divers other necessities, suitable to the degree of the said James, and at his special instance and request, to wit, at, &c. ; and this, &c. : wherefore, &c. and his damages by him sustained on occasion of the not performing of the said several promises and undertakings herein before particularly mentioned, to be adjudged to him, &c.

And as to the 9th, 11th, and 12th Counts, *nolle prosequi*.

And as to so much of the said plea of the said James, by him above pleaded in bar, as relates to the several promises and undertakings of the ninth, eleventh, and last Counts of the said declaration mentioned, the said Thomas saith, that he will not further prosecute his said bill against the said James, as to the several promises and undertakings in those last-mentioned Counts of the said declaration; therefore let the said James be acquitted and go thereof without day, &c.

EDWARD LAW.

And

And the said James, as to the said plea of the said Thomas, by him above pleaded to the said plea of the said James, by him above pleaded in bar, as to the several promises and undertakings in the said first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth Counts of the said declaration mentioned, says, that he the said Thomas, by reason of any thing therein alledged, *actio non*; because, he says, that the said stable, in the said first Count of the said declaration mentioned, and the said stable in the said second Count of the said declaration mentioned; and the said horse-meat, stabling, care and attendance, in the fifth and sixth Counts of the said declaration mentioned; and the said horses, chaises and other carriages, in the said third and fourth Counts of the said declaration mentioned; and the said goods, wares, and merchandizes in the seventh and eighth Counts of the said declaration mentioned, were not, nor were any of them, suitable and necessary to the estate and degree of him the said James: and that the money in the tenth Count of the said declaration mentioned, was not money laid out and expended, or paid by the said Thomas, for, in, and about the buying and providing for the said James, necessaries suitable to the degree of the said James in manner and form as the said Thomas hath in and by his said plea, by him above in reply pleaded in that behalf alledged: And of this he puts himself upon the country, &c.; and the said Thomas doth the like, &c.

Rejoinder taking issue on the replication.

Verdict for plaintiff.

ROSE } AND the said Thomas, by John Parker his attorney,
against } comes and defends the wrong and injury, when, &c.
HUNT. } and says, that he did not undertake and promise in manner and form as the said John hath above thereof complained against him; and of this he puts himself upon the country, &c.: And the said Thomas, for further plea in this behalf, by leave of the court here to him for this purpose first granted, according to the form of the statute in such case made and provided, says, that the said John ought not to have or maintain his aforesaid action thereof against him; because, he says, that at the time of making the said supposed promises and undertakings in the said declaration mentioned, he the said Thomas was under the age of twenty-one years, to wit, of the age of twenty years and no more, that is to say, at London aforesaid, in the parish and ward aforesaid; and this he is ready to verify, wherefore he prays judgment, whether the said John ought to have or maintain his aforesaid action thereof against him, &c.: And the said Thomas, for further plea in this behalf, by like leave of the court here to him for this purpose first granted, according to the form of the statute in such case made and provided, says, that the said John ought not to have or maintain his aforesaid action thereof against him; because, he says, that he the said Thomas did not at any time, within six years next before the exhibiting of the bill of the said John, undertake or

Plea in *assumpsit* for money lent and on an account stated; 1st, general issue; 2d, infancy; 3d, *non assumpsit infra sex annos*.

If under age at the time of pleading, must plead by guardian. Imp. Prac. 459. 463.

3d Plea.

REPLICATION, CONFIRMATORY PROMISE.

promise in manner and form as the said John hath above thereof complained against him; and this he is ready to verify: wherefore he prays judgment, if the said John ought to have or maintain his aforesaid action thereof against him, &c.

WILLIAM WALTON.

Replication to
1st plea, issue;
to 2d, confirma-
tory promises.
to 3d issue.

Vide Broth-
wick v. Carru-
ther, Term. Rep.
648. that under
the last replica-
tion the plain-
tiff need only
prove a promise,
and defendant
must shew he
was under age
at the time.

HUNT } *§.* And the said John, as to the said plea of the said
against } Thomas, by him first above pleaded in bar, as to the said
ROSE. } several promises and undertakings in the said declaration,
and whereof he hath put himself upon the country, doth the like,
&c. And as to the said plea of the said Thomas, by him secondly
above pleaded in bar, he the said John says, that, notwithstanding
any thing in that plea alledged he the said John ought not to be
barred from having and maintaining his aforesaid action thereof
against him the said Thomas; because, he says, that though true
it is that the said Thomas, at the time of making of the said pro-
mises and undertakings in the said declaration mentioned, was un-
der the age of twenty-one years, as the said Thomas hath above
in pleading alledged: Yet the said John in fact says, that the said
Thomas hath, since the making of the said several promises and
undertakings in the said declaration mentioned, attained the age
of twenty-one years, to wit, at London aforesaid, in the parish
and ward aforesaid; and that after the said Thomas attained the
said age of twenty-one years, and before the exhibiting the said
bill of the said John against the said Thomas, to wit, on the first
of April in the year 1787 aforesaid, at London aforesaid, in the
parish and ward aforesaid, he the said Thomas agreed to and con-
firmed the said several promises and undertakings of the said
Thomas in the said declaration mentioned, and each and every of
them; and this he the said John is ready to verify, wherefore he
prays judgment and his damages by him sustained by reason of the
non-performance of the said several promises and undertakings in
the said declaration mentioned, to be adjudged to him, &c. And
as to the said plea of the said Thomas, by him lastly above pleaded
in bar, he the said John says, that by reason of any thing by the
said Thomas in that plea alledged, he the said John ought not to
be barred from having and maintaining his aforesaid action thereof
against him the said Thomas; because he says, that the said Thomas
did, within six years next before the exhibiting the bill of the said
John, undertake and promise in manner and form as the said John
hath above thereof complained against him the said Thomas, to
wit, at London aforesaid, in the parish and ward aforesaid; and
this he the said John prays may be enquired of by the country,
and the said Thomas doth the like, &c.

I have taken for granted that the plain-
tiff does not mean to deny the plea of
infancy, but to rely on some promise by

defendant, subsequent to his coming of
age, and have replied accordingly.

T. BARROW.

And

And the said Thomas. as to the said plea of the said John, by him above in reply pleaded to the said plea of the said Thomas, by him secondly above pleaded in bar, says, that he did not, after he the said Thomas attained the age of twenty-one years, agree to and confirm the said several promises and undertakings in the said declaration mentioned, or any or either of them, in manner and form as the said John hath above in his said replication alledged; and of this he the said Thomas puts himself upon the country, &c. and the said John doth the like, &c.

Vide 1. T. R. 648.

STEVENSON, } AND said John Stevenson, who is under the Plea of infancy
at the suit of } age of twenty-one years, by William Jones his by guardian.
WILLIAMS. } guardian, as specially admitted by the court of
our lord the king now here, to defend for defendant, comes and defends the wrong and injury, when, &c. and saith, that the said defendant did not undertake or promise in manner and form as he said plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c.: And for further plea in this behalf he said defendant, by leave, &c. says, that said plaintiff, *actio non*, because he saith, that said defendant, at the several times of the making of the said several promises and undertakings in said declaration mentioned, was an infant within the age of twenty one years, to wit, of the age of nineteen years and no more, to wit, at London, &c. aforesaid; and this, &c.; wherefore, &c. if, &c.

J. MORGAN.

WILLIAMS } And said plaintiff, as to said plea of said defend- Replication, that
against } ant, by him lastly above pleaded in bar, saith, the promises
STEVENSON. } that he, by any thing by said defendant in his were for neces-
same plea alledged, ought not to be barred from having and main- saries.
taining his aforesaid action against defendant, because protesting that said defendant, at the time of the making of the said several promises and undertakings in said declaration mentioned, was of full age of twenty-one years, as said defendant in his said plea hath above alledged: Nevertheless, for replication in this behalf, said plaintiff says, that said goods, wares, and merchandizes sold and delivered by said plaintiff to said defendant, and said work and labour done and performed, and said materials and necessary things found and provided by said plaintiff for said defendant, were necessary goods, wares, and merchandizes, work and labour, materials and things sold and delivered, done, found, and provided by said plaintiff for said defendant, at his special instance and request, and suitable to his estate and degree; and that said money in said declaration mentioned to have been paid, laid out, and expended by said plaintiff for the said defendant, was so paid, laid out, and expended for buying and providing for said defendant at his special instance and request, things necessary for said defendant, and suitable to his estate and degree, that is to say, at, &c. aforesaid; and this, &c.; wherefore, &c. his damages by him sustained by reason of the non-performance of said several promises

and undertaking in said declaration mentioned to be adjudged to him, &c.

Rejoinder, that promises, &c. were not for necessities.

STEVENSON } And said defendant, as to said plea by him above
at the suit of } pleaded, by way of reply to said plea of said de-
WILLIAMS. } fendant by him above pleaded in bar, says, that
said goods, wares, and merchandizes sold and delivered by said plaintiff to said defendant, and said work and labour done and performed, and said materials and necessary things found and provided by said plaintiff for said defendant, were not necessary goods, wares, merchandizes, work and labour, materials and things sold, delivered, done, found, and provided by said plaintiff for said defendant, and suitable to his said defendant's estate and degree; and that said money in said declaration mentioned to have been paid, laid out, and expended by said plaintiff to and for the use of the said defendant, was not money paid, laid out, and expended by said plaintiff, for the buying and providing for said defendant's things necessary for said defendant suitable to his estate and degree, as said plaintiff hath above in his said plea pleaded, by way of reply in that behalf alledged; and of this he puts himself upon the country, &c.

J. MORGAN.

Nol. pros. to some Counts; replication to others. To plea of infancy, providing necessities suitable for defendant's degree.

COURT } AND the said plaintiff, as to the said plea of the said
against } defendant by him above pleaded in bar, saith, that as he
OSBORN. } cannot deny the said plea of the said defendant, he will not any further prosecute his bill in this present action or suit, as to the two last Counts thereof; but as to the several other Counts of the said bill or declaration, he the said plaintiff says, that he ought not, by reason of any thing by the said defendant in that plea alledged, to be barred from having and maintaining his aforesaid action in respect of such premises against him the said defendant, because he the said plaintiff says, that the work and labour, care and diligence, in the first and second Counts of the said declaration of him the said plaintiff mentioned, was necessary work and labour, care and diligence, done, performed, and bestowed by him the said plaintiff for the said defendant, at his special instance and request, and suitable to his estate and degree, and that the money mentioned in the third Count of the declaration was money laid out, expended, and paid by the said plaintiff in the buying and providing for him the said defendant, and at his like instance and request, things necessary for the said defendant, and suitable to his estate and degree, to wit, at, &c. aforesaid; and this the said plaintiff is ready to verify: wherefore he prays judgment, and his damages on occasion of the non-performance of the said promises and undertakings in the said three first Counts of his aforesaid declaration mentioned to be adjudged to him, &c.

V. LAWES.

HAMMOND,

INFANCY.—REPLICATION, CONFIRMATORY PROMISE. 101

HAMMOND and another } AND said plaintiffs, as to said plea of Replication to a
against } said defendant by him above pleaded in plea of infancy,
SMITH, the younger. } bar says, *precludi non*, because they say, that defendant
that though true it is that said defendant, at the time of the mak- confirmed the
ing of said several promises and undertakings in said declaration promise at full
mentioned, was within the age of twenty-one years, as said de- age.
fendant hath above in pleading alledged: Yet said plaintiffs in fact Vide r. Stra.
further say, that said defendant hath, since the making of said 690.
promises and undertakings, attained the age of twenty-one years, i. T. R. 643.
to wit, at, &c. aforesaid; and that after said defendant had at-
tained to his said age of twenty-one years, and before the exhi-
biting the bill of said plaintiffs against said defendant, to wit, on,
&c. at, &c. aforesaid, he said defendant agreed to and confirmed
said several promises and undertakings of him said defendant in said
declaration mentioned, and each and every of them; and this,
&c.; wherefore they pray judgment, and their damages by them
sustained by reason of the not performing of said several promises
and undertakings in said declaration mentioned, to be adjudged to
them, &c. V. LAWES.

See rejoinder to like replication, ante, 99.

AND now at this day, that is to say, on Wednesday next af- Plea of infancy.
ter fifteen days from the day of Easter in this same term, until which
day the said Julius had leave to imparl to the said bill, and then
to answer the same, &c. as well the said William by his said attor-
ney, as the said Julius by Christopher H the younger, his attorney,
do come before our lord the king at Westminster, and the said
Julius defends the wrong and injury, when, &c. and saith, that
he did not undertake and promise in manner and form as the said
William hath above thereof complained against him, and of this
he puts himself upon his country; and the said William doth the
like, &c.; and for further plea in this behalf, the said Julius, by
leave of the court here to him for this purpose granted, ac-
cording to the form of the statute in such case lately made and pro-
vided, says, that the said William ought not to have or maintain
his aforesaid action thereof against him, because he says, that he
the said Julius, at the time of the making of the said several pro-
mises and undertakings in the said declaration mentioned, and each
and every of them, was within the age of twenty-one years, to
wit, of the age of nineteen years and no more; and this he the
said Julius is ready to verify: therefore he prays judgment if the
said William ought to have or maintain his aforesaid action there-
of against him, &c. W. BALDWIN.

JANE WODYEAR } DECLARATION for board and lodg-
against } ing, necessaries found, goods sold; mo-
WM. GRAHAM, esq. } ney paid, lent, had and received; ac-
count stated; breach. Plea, Infancy. Replication, necessaries,
(See next page.)

H 3

And

Replication as to
some Counts, ne-
cessaries for
board and lodg-
ing, and to the
rest, *vol. pro.*

And the said Jane, as to the said plea of the said William by him above pleaded in bar, as to the first, second, third, and fourth Counts in the said declaration mentioned says, [*precludi non*], because she says, that the said thirty pounds in the said first Count of the said declaration mentioned, was for the necessary board, lodging, and maintenance of the said William, his degree requiring the same, before that time found and provided by the said Jane for the said William, at his special instance and request; and that the said sum of thirty pounds in the second Count of the said declaration mentioned, was for the necessary board, lodging, and maintenance of the said William, his degree requiring the same, before that time found and provided by the said Jane for the said William, at his like special instance and request; and that the said sum of thirty pounds, in the said third Count of the said declaration mentioned, was for necessary victuals and food by the said Jane before that time sold and delivered by the said Jane to the said William, his degree requiring the same, at his like special instance and request; and that the said sum of thirty pounds in the said 4th Count of the said declaration mentioned, was for other necessary food and victuals by the said Jane before that time sold and delivered to the said William at his like special instance and request, his degree requiring the same; and this she is ready to verify: wherefore she prays judgment and her damages, by reason of the non-performance of the said promises and undertakings in the said first, second, third, and fourth Counts of the said declaration to be adjudged to her; and as to the said plea of the said William by him above pleaded in bar, as to the fifth, sixth, seventh, and last Counts of the said declaration, the said Jane admits the same to be true, and will not further prosecute the said William thereon; therefore, as to those Counts, let the said William be acquit, and go thereof without day.

W. CALDECOTT.

STATUTES OF FRAUD.

REID } DECLARATION special *assumpsit*, in con-
against } sideration that said plaintiff would not proceed to trial in
NASH. } a certain cause then at issue between plaintiff and one
R. J. defendant undertook to pay plaintiff the sum of fifty pounds
with his costs, to be taxed for the declaration in this cause against
A. B.

Plea of Statute
of Frauds,
39. Car. 2. 3.)

NASH, } *Non assumpsit*. 2d, by leave, &c. *affio non*,
at the suit of } because he says, that long before the making
READ. } of the promise and undertaking in the said
declaration mentioned, that is to say, by a certain act of parlia-
ment

ment begun and holden at Westminster in the county of Middlesex on the eighth of May 1671, and from thence continued by several prorogations to fifteenth of February 1676, entituled, "An Act for Prevention of Frauds and Perjuries;" it was and is amongst other things enacted, that from and after the twenty-fourth day of June A. D. 1677, no action should be brought whereby to charge any executor or administrator upon any special promise, to answer damages out of his own estate, or whereby to charge the defendant, on any special promise, to answer the debt, default, or miscarriage of another person, or to charge any person upon an agreement, upon consideration of marriage, or upon any contract for sale of lands, tenements, hereditaments, or any interests in or concerning them, or upon any agreement that was not to be performed for the space of one year from the making thereof, unless the agreement upon which such action should be brought, or some memorandum or note thereof should be written, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized, as by the said Act amongst other things more fully appears: And the said defendant further says, that the said plaintiff hath exhibited his bill, and brought his said action against him the said defendant, upon the promises and undertakings in the said declaration mentioned, for the default of the said Robert Johnson in the said declaration mentioned, and for no other purpose whatsoever; and there is not now, nor ever was, any agreement in writing touching the promises and undertakings of the said defendant in the said declaration mentioned, or any of them, nor is there, or ever was, any memorandum or note of them, or any of them, signed either by the said defendant or any other person thereunto by him lawfully authorized; and this, &c.; wherefore, &c. if, &c.

J. FORD.

To the above plea Mr. Warren drew a general demurrer, and on a second argument judgment was given for plaintiff, the court of B. R. being unani-

mously of opinion, that the promise was out of the statute, because of the new consideration of staying a suit begun, and particularly of withdrawing a record.

STATUTES OF GAMING.

FOSTER } AS to the second, third, and fourth promises, &c. The stat. of
at the suit of } (non assumpsit), and also to the first, &c. *actio* of gaming, 9.
WEBB. } non, because he saith, that after the first day of Ann. c. 14.
May A. D. 1711, and before the making of the to an action on an indorser
said promissory note in the said declaration mentioned, to wit, on note, that plain-
the said, &c. in the said declaration mentioned, at, &c. aforesaid, tiff and defend-
the said defendant and the said P. A. in the said declaration men- ant played at
tioned, played together at a game or play commonly called or cards.
known

GAMING. REPLICATION, MONEY *bonafide* LENT.

known by the name of, &c. for divers sums of money upon tick and credit, and not for ready money; and that the said defendant and P. A. so playing at the said game or play with cards called, &c. he the said defendant then and there, at one and the same time and sitting, lost to the said P. A. and the said P. A. at the said one time and sitting, won of the said defendant divers sums of money, in the whole amounting to a sum of money far exceeding the sum of ten pounds, to wit, the sum of, &c. whereof not any part was then and there paid to the said P. A.; and thereupon the said defendant afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, made his certain note in writing, commonly called a promissory note, his own proper hand being thereto subscribed, bearing date the day and year last aforesaid; by which said note the said defendant promised to pay to the said P. A. by the name of, &c. or order, the sum of, &c. six months after date of the said note, for value received by him the said defendant, and then and there delivered the said note to the said P. A. for the payment of the money aforesaid, to wit, of the said pounds so lost by the said defendant at the said game or play with cards, and so won by the said P. A. of the said defendant at the said game or play with cards at the said one time and sitting, and which said note is the very same identical note in the said first Count of the said declaration mentioned and set forth, and not another or different note, and that by means of the premises, and by force of the statute in such case made and provided, the said note was and is wholly void, and of no force and effect in the law; and this, &c.; wherefore, &c.

G. NARES.

Replication, that
the note is as gi-
ven for money,
bona fide lent and
traverses the
gaming con-
sideration.

(*Precludi non*), because protesting as to the sufficiency of the plea; protesting also, that the said P. A. in the said plea mentioned, and the said defendant did not play together at the said game, or play with cards called, &c. as the said defendant hath in his said plea above alledged; protesting also, that the said defendant did not lose to the said P. A. or the said P. A. win of the said defendant, at the said game or play, any money whatsoever, as the said defendant hath in his said plea above alledged, for replication in this behalf the said plaintiff saith, that the said defendant, on the day and year in the said declaration in that behalf made and delivered the said note, in the said declaration mentioned, to the said P. A. for securing the payment of the said sum of pounds at the time of the making of the said note, really and *bona fide* due and owing from the said defendant to the said P. A. for money by the said P. A. before that time lent and advanced to the said defendant; without this, that the said defendant made or delivered the said note to the said P. A. for the payment of money lost by the said defendant at the said game or play with cards, or for money won by the said plaintiff of the said defendant at the said game or play with cards, as the said defendant hath above

in

in pleading alledged; and this he is ready to verify: wherefore he prays judgment, and his damage by him sustained on occasion of the not performing of the several promises and undertakings, and to be adjudged to him, &c.

J. A. HEWITT.

And said defendant, as to said plea of said plaintiff by him above pleaded, in reply to said plea of said defendant by him above pleaded in bar as to said first promise, &c. says, that said plaintiff, by reason of any thing in his said plea so pleaded in reply, contained, *actio non*, because protesting that said defendant did not, on the day and year in said declaration mentioned, in that behalf mentioned, or at any time make and deliver said note in said declaration mentioned, to said P. A. for securing the payment of pounds, at the time of the making of said note, really and *bona fide* due and owing from said defendant to said plaintiff, for money by the said P. A. before that time lent and advanced to said defendant in manner and form as said plaintiff hath in his replication aforesaid alledged, for rejoinder in this behalf said defendant saith, as before, that he did deliver said note to said P. A. for the payment of money lost by said defendant to said P. A. and won by said plaintiff of said defendant at said game or play with cards, in manner and form as said defendant hath above in his said plea in that behalf alledged; and of this he puts himself upon the country, &c.

Rejoinder, taking issue on the traverse.

STATUTES OF USURY.

MACHIN
against

BREADEY.

AND the said defendant, by his attorney, comes and defends the wrong and injury, when, &c.; and as to the promise and undertaking in the first Count of the declaration mentioned, and there- to alledged to have been made by him the said defendant, and also as to the said promises and undertakings in the second Count of the said declaration mentioned, and thereby alledged to have been made by the said defendant, he the said defendant says, that the said plaintiff ought not to have or maintain her aforesaid action in respect to such promises and undertakings against him the said defendant, because he says, that the said promissory note in the said first Count, and the said promissory note in the said second Count of the aforesaid declaration mentioned, are one and the same promissory note, and not divers or different; and that after the twenty-ninth of September A. D. 1714, and before the making of the said promissory note, to wit, on the fourteenth day of October A. D. 1779, at London, &c. aforesaid, it was corruptly, and against

Plea of stat. of usury, 12. Ann. st. 2. s. 10. to an action on a promissory note at the suit of payee v. drawer. Smith v. Dover. Doug. 412.

against the form of the statute in such case made and provided; agreed by and between the said defendant and the said plaintiff, that the said plaintiff should, on that day, lend to the said defendant the sum of five pounds five shillings of lawful money of Great Britain, to be repaid by him the said defendant at the end of six months then next following, or sooner, in case the same or any part thereof should be wanted; and that the said plaintiff should forbear, and give to the said defendant, time and day of payment of the said sum of five pounds five shillings so to be lent as aforesaid, until and for the time afterwards; and that, besides lawful interest from the day of the lending of the said sum of five pounds five shillings to him the said defendant until the repayment thereof, the said defendant should, for the said forbearing and giving time and day of payment of the said sum of five pounds five shillings, until and for the time aforesaid, also give and pay to the said Ann, that is to say, at the time of her lending the said sum of five pounds five shillings so to be lent as aforesaid, the sum of five shillings of lawful, &c.; and that, for securing the payment by the said defendant of the said sum of five pounds and five shillings so to be lent as aforesaid, with the aforesaid lawful interest for the same, he the said defendant should, at the time of the lending of the said five pounds five shillings to him the said defendant as aforesaid, make and give to her the said plaintiff his promissory note in writing, bearing date the fourteenth day of October in the year 1779 aforesaid, and then thereby promise to pay to her the said plaintiff or bearer, at six months after the date of the said note, or sooner, if any should be wanted, the said sum of five pounds five shillings so to be lent as aforesaid, with lawful interest for such sum: And the said defendant in fact further saith, that the said plaintiff, in pursuance of the said corrupt agreement after the making thereof, to wit, on the said fourteenth day of October in the year 1779 aforesaid, at London, &c. aforesaid, lent to the said defendant the said sum of five pounds five shillings of lawful money of Great Britain, so agreed to be lent to him as aforesaid, to be repaid by him the said defendant at the end of six months then next following or sooner, in case the same, or any part thereof, should be wanted: And the said plaintiff did then and there forbear and give to the said defendant time and day of payment of the said sum of five pounds five shillings so by her lent as aforesaid, until and for the time aforesaid; and he the said defendant did then and there, that is to say, at the time of said lending of the said five pounds five shillings, and in pursuance of the aforesaid corrupt agreement, give and pay to the said plaintiff the said sum of five shillings of lawful, &c. so by him agreed to be given and paid to the said plaintiff as aforesaid which the said plaintiff then and there took, accepted, and received, of and from him he the said defendant, under and in pursuance of the aforesaid corrupt agreement, and he the said plaintiff did then and there, at the time of the said lending of the said five pounds five shillings

to

to him the said defendant as aforesaid, and further securing the payment of the said sum of money by him the said defendant so lent to him by the said plaintiff as aforesaid, with the said lawful interest so agreed to be given and paid by him the said defendant as aforesaid, make and give to her the said plaintiff his the said defendant's promissory note in writing, bearing date the said fourteenth day of October in the year 1779, and did thereby promise to pay her the said plaintiff or bearer, at six months after the date of the said note, or sooner, if any should be wanted, the said sum of five pounds five shillings, so by her lent to him the said defendant as aforesaid, with lawful interest for such sum; which said promissory note she the said plaintiff then and there took, accepted, and received from him the said defendant for the cause and purpose aforesaid, and according to, and under and in pursuance of the aforesaid corrupt agreement; and the said defendant avers, that the said promissory note so by him made and given under the aforesaid corrupt agreement as aforesaid, and the aforesaid promissory note in the first and second Counts of the said declaration mentioned are one and the same promissory note, and that said sum of five shillings so by him paid and given to the said plaintiff, and the said interest recovered and made payable by the aforesaid promissory note of him the said defendant, exceeds the rate of five pounds for the forbearing of one hundred pounds for one year, contrary to the form of the statute in such case made and provided; and this he is ready to verify: wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action in this respect to the said promises and undertakings in the said first and second Counts in the said declaration mentioned, and thereby alledged to have been made by him the said plaintiff against him the said defendant; and as to the third, fourth, and fifth Counts of the said declaration, he the said defendant says, that he did not undertake or promise in manner and form as the said plaintiff hath in those Counts complained against him; and of this he puts himself upon the country, &c.

*Non assumpsit to
3d, 4th, and 5th
Counts.*

If the defendant means to defend this evidence will otherwise deprive him of
action, he had better plead the general his defence.
issue only, as the smallest variation in

V. LAWES.

AND the said defendant, by A. B. her attorney, comes and defends the wrong and injury, when, &c. and as to the promise and undertaking in the first Count of the declaration mentioned, says, that the said plaintiff ought not to have or maintain his aforesaid action in respect of such promise and undertaking against her; because she says, that after the making of the said bill of exchange in the said first Count of the declaration mentioned, to wit, on, &c. at, &c. it was corruptly and against the form of the statute in such case made and provided, agreed by and between the said plaintiff and the said defendant, that the said plaintiff

*Statute of Usury,
12 Ann. st. 2.
c. 16. pleaded to
an act on on an
indorsed bill, at
the suit of in-
dorsee against
indorser.*

REPLICATION. CONSIDERATION *bonâ fide.*

plaintiff should lend and advance to her the said defendant the sum of pounds, and that the said plaintiff should give day of payment thereof to the said defendant, until and upon, &c. and that the said defendant, for the loan of the said pounds, and for the giving payment thereof until and for the time aforesaid, should, at the time of the lending of the said pounds by the said plaintiff to the said defendant, give and pay to the said plaintiff the sum of pounds, and that for securing to the said plaintiff the payment of the said pounds on, &c. the said defendant should, at the time of the lending of the said pounds by the said plaintiff to the said defendant in manner aforesaid, indorse and deliver to the said plaintiff the said bill of exchange in the said first Count of the said declaration mentioned, for the said plaintiff to receive the money therein mentioned when the same should become due : *And* the said defendant further saith, that after the making of the said agreement, to wit, on, &c. at, &c. aforesaid, the said plaintiff, in pursuance of the said agreement, did lend and advance to the said plaintiff the said sum of pounds so agreed to be lent to her as aforesaid, and that the said defendant did then and there give and pay to the said plaintiff the said sum of pounds, so as aforesaid agreed to be given and paid by the said defendant to the said plaintiff for the forbearing and giving day of payment of the said pounds so by the said plaintiff lent and advanced to the said defendant as aforesaid, and did also, in completion of the said agreement, then and there indorse and deliver to the said plaintiff the said bill of exchange in the said first Count of the said declaration mentioned, for the purpose in that behalf before-mentioned, and the said plaintiff then and there accepted, had, and received the said bill, and also the aforesaid pounds of and from the said defendant for the purpose aforesaid : *And* the said defendant further saith, that the said sum of pounds so by her given and paid to the said plaintiff on the occasion, and in manner and for the purpose aforesaid, exceeded the rate of five pounds for the forbearing and giving day of payment of one hundred pounds for one year, against the form of the statute in such case made and provided, and that the said indorsement of the said bill of exchange in this plea, and the indorsement thereof in the said first Count of the said declaration mentioned, are one and the same, and not divers or different ; and this the defendant is ready to verify ; wherefore she prays judgment if the said plaintiff ought to have or maintain his aforesaid action in respect to the first promise and undertaking in the said declaration mentioned.

V. LAWES.

Replication that the consideration was *bonâ fide*, and traverses the usury. *Baynham v. Mathews*, 2. Stra. 871. *Smith v. Dover*, Dougl. 412.

And the said plaintiff, as to the said plea of the said defendant by her above pleaded in bar, as to the promise and undertaking in the said first Count of the said declaration mentioned, says, that notwithstanding any thing in that plea alledged, he ought to be barred from having and maintaining his aforesaid action in respect to such promise and undertaking against her the said defendant

fendant, because he saith, that the aforesaid indorsement of the said bill of exchange in the said first Count of the said declaration mentioned, was made by her the said defendant, to him the said plaintiff, upon a *bona fide* and good and valuable consideration, to wit, at Westminster aforesaid, without this, that it was agreed by and between him the said defendant, and the said plaintiff, in manner and form as the said defendant hath above in her said plea first above pleaded alledged, and this he the said plaintiff is ready to verify, wherefore he prays judgment in respect to the said promise and undertaking in the said first Count of the said declaration mentioned, together with damages by him sustained, on occasion of such promises to be adjudged to him, &c.

V. GIBBS.

That in such replication it is sufficient to traverse the agreement generally, without making use of the word corruptly, that being only a conclusion of law upon the facts. Vide *Ann.* 287.

AND the said Richard, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the sum of thirteen pounds, parcel of the said several sums of money in the said declaration mentioned, says, that he cannot deny the said action of the said John in that respect, nor but that he the said Richard did undertake and promise in manner and form as the said John hath above thereof complained against him, nor but the said John hath sustained damage by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned as to the said sum of thirteen pounds, that is to say, to the amount thereof, over and above his costs and charges by him about his suit in that behalf expended: and as to the residue of the said several sums of money in the said declaration mentioned, the said Richard says, that he did not undertake and promise in manner and form as the said Richard hath above thereof complained against him, and of this he puts himself upon the country, &c. and the said John doth the like, and inasmuch as the said Richard hath not denied the said action of the said John, as to the sum of thirteen pounds, part of the said several sums of money in the said declaration mentioned, but admits the same to be true, and that the said John hath sustained damage on occasion of the non-performance of the said promises and undertakings in the said declaration mentioned, as to that money to the amount thereof, that is to say, to thirteen pounds, over and above his costs and charges, in that behalf the said John prays judgment for those damages over and above his costs and charges; therefore it is considered that the said John do recover such damages against the said Richard, over and above his costs and charges

Confession of the action as to part, and *non assumpsit* as to the residue, with judgment as to the part confessed.

STATUTES ACT OF UNIFORMITY.

charges in that behalf, but because it is convenient that there be but one taxation of damages in this suit, therefore let all further proceedings, as to the damages and costs, stay until after the trial of the said issue above joined between the parties, and to try the said issue so joined between the said parties, the sheriff is commanded that he cause to come here in twelve, &c. by whom, &c. who neither, &c. to recognize, &c. because as well, &c.

V. LAWES.

(a) Plea to declaration by curate against rector. 1st, *Non assumpsit*, 2d plea, that the plaintiff did not subscribe the declaration of conformity required by 13. & 14. C. 2. 3d plea, that plaintiff did not procure a certificate under the hand of the bishop, and read the same in the church as required by the act above mentioned.

AND now at this day, that is to say, on Tuesday after eight days of St. Hilary in this same term, until which day the said Peter had leave to imparle to the said bill, and then to answer the same, &c. as well the said George, by his said attorney, as the said Peter, by W. B. his attorney, do come before our lord the king, at Westminster, and the said Peter comes and defends the wrong and injury, when, &c. and says, that he did not undertake, or promise in manner and form as the said George hath above thereof complained against him, and of this he puts himself upon the country, and the said George doth the like: and for a further plea in this behalf, as to the several promises and undertakings in the said first, second, and third Counts of the said declaration mentioned, the said Peter, by leave of the court for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said George ought not to have his aforesaid action maintained against him, because he says, that the said office of curate, in the said first Count of the said declaration mentioned, and the said office of curate in the said second Count of the said declaration mentioned, and the said office of curate in the said third Count of the said declaration mentioned, are one and the same, and not other or different offices: and the said Peter in fact further saith, that the said George did not at, or before his taking possession of the said office, subscribe the declaration or acknowledgement of conformity in the behalf required, in and by a certain act of parliament made and passed in the thirteenth and fourteenth years of the reign of his late majesty king Charles the Second, intituled, "An act for the uniformity of public prayers, and administration of the sacrament, and other rites and ceremonies, and for the establishing the form of making, ordaining, and consecrating bishops, priests, and deacons in the church of England," according to the form and effect of a certain act of parliament, but failed therein, to wit, at, &c. whereby, and by force of the said act of parliament, the said George lost and forfeited the said office of curate, and became and was utterly disabled and *ipso facto* deprived of the same; for which reason he the said Peter at and during the said time, when, &c. did prevent and hinder the said George from officiating in the said office, as

(a) See the declaration, Vol. III. 62.

he

he lawfully might for the cause aforesaid, and did not pay to him the said George the said yearly sum of fifty pounds, in the said first, second, and third Counts of the said declaration mentioned, whereof the said George hath above complained against him the said Peter, and this he the said Peter is ready to verify, wherefore he prays judgment if the said George ought to have his aforesaid action thereof maintained against him : And for a further plea in this behalf, as to the said several promises and undertakings in the said first, second, and third Counts of the said declaration mentioned, the said Peter by like leave, &c. according to the form, &c. says, that the said George ought not to have, &c. because he says, that the said office of curate in the said first Count of the said declaration mentioned, and the said office of curate in the said second Count in the said declaration mentioned, and the said office of curate in the said third Count of the said declaration mentioned, are one and the same office, and not other or different offices : And the said Peter in fact further saith, that the said George did not procure a certificate under the hand and seal of the said archbishop, bishop, or ordinary of the diocese wherein he the said George was and officiated as curate of the said united parishes, that is to say, a certificate of the subscription by him the said George of the said declaration or acknowledgment of conformity, in that behalf required in and by the said act of parliament, nor did publicly and openly read the same, together with the said declaration or acknowledgment aforesaid, upon any Lord's day within three months following, such subscription in the church of the said united parishes where he the said George so officiated as aforesaid, in the presence of the congregation there assembled in the time of divine service, according to the form, &c. of the said act of parliament, but failed therein, to wit, at, &c. whereby, and by force of the said act of parliament, the said George lost the said office of curate, and became and was utterly disabled and *ipso facto* deprived of the same, for which reason he the said Peter at and during the said time, when, &c. (being after the expiration of the said three months) did prevent and hinder the said George from officiating in the said office as he lawfully might for the cause aforesaid, and did not pay to him the said George the said yearly sum of fifty pounds in the said first, second and third Counts of the said declaration mentioned, whereof the said George hath above complained against him the said Peter, and this he the said Peter is ready to verify, wherefore he prays judgment, if the said George ought to have his aforesaid action thereof maintained against him, &c.

2d plea.

3d plea.

SAMUEL SHEPHERD.

And

Replication.

And the said George as to the said plea of the said Peter, by him secondly above pleaded in bar, as to the several promises in the first, second, and third Counts of the said declaration mentioned, says, that the said George ought not to be barred from having his aforesaid action thereof maintained against him the said Peter, because he the said George says, that though true it is that the said office of curate in the said first Count of the said declaration mentioned, and the said office of curate in the said second Count of the said declaration mentioned, and the said office in the said third Count of the said declaration mentioned, are one and the same office, and not other or different offices, as the said Peter has above in his second plea alledged: yet he the said George in fact further saith, that he the said George did, before his taking possession of the said office, to wit, on, &c. in, &c. subscribe the declaration or acknowledgment of conformity in that behalf required in and by the said act of parliament, in the said second plea of the said Peter mentioned; and this he the said George prays may be enquired of by the country: and the said George, as to the said plea of the said Peter by him lastly above pleaded in bar, as to the said several promises and undertakings in the said first, second, and third Counts of the said declaration mentioned, says, that he ought not to be barred from having his aforesaid action thereof maintained against him the said Peter, because protesting the said plea so lastly above pleaded, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar him the said George from having and maintaining his said action thereof against the said Peter. For replication in this behalf the said George saith, that though true it is, that the said office of curate in the said first Count, &c. second Count, &c. and third Count, &c. are one and the same office, and not other or different offices, as the said Peter hath above in his said plea lastly above pleaded alledged: yet the said George in fact further saith, that he the said George, before his taking possession of the said office, to wit, on, &c. in, &c. did procure himself to be duly licensed by the bishop of London, in whose diocese the said church of the said united parishes of St. M. and St. G. in the city of London was, and from thenceforth hitherto hath been, and still is ready to perform the office of curate in the said church, and did then and there, in due manner, subscribe the declaration or acknowledgment of conformity by law in that behalf required, and did then and there procure a certificate under the hand and seal of the said bishop of London, of such subscription by him the said George, of the said declaration or acknowledgment of conformity, and the said George in fact further saith, that having obtained such license as aforesaid, from the said bishop of London, and having so subscribed such declaration or acknowledgment of conformity as aforesaid, and having also obtained such certificate thereof as aforesaid, he the said George afterwards, to wit, on, &c. did enter upon, and was received by the said Peter into his said office of a curate, in his the said Peter's church of the aforesaid united parishes

parishes, and did continue to perform the said office, and to officiate in the said church until and upon the seventeenth day, &c. and that on that day, that is to say, on the said seventeenth day, &c. the said bishop of London, upon a certain visitation then and there by him made in and of his said diocese, to wit, at London aforesaid, in the said parish of, &c. in due manner allowed of, and confirmed the said license so by him granted to the said George as aforesaid, and then and there assented to the said George continuing in the possession of, and officiating in his said office of curate in the said church of the said united parishes, and he the said George did thereupon continue, and by and with the assent and consent of the said Peter, was continued in the said office from thence until he the said Peter afterwards, and long before the expiration of three months from such confirmation of the said license of the said George as aforesaid; and also before he the said George could or was enabled to read the said certificate of the said bishop of the said subscription by him the said George of his aforesaid declaration or acknowledgment of conformity, in the said church of the said united parishes, on some Lord's day, in the presence of the congregation there assembled, in the time of divine service, to wit, on, &c. in the said declaration mentioned, of his own wrong prevented and hindered the said George from any longer officiating in the said church, and then and from thenceforth hitherto hath wholly excluded and kept him from and out of the said church, and hindered and prevented him from officiating therein, as in the said first, second, and third Counts of the said declaration is alledged, and thereby hindered and prevented him from reading in the same, the said certificate of the said bishop of the said subscription by him the said George of his said declaration or acknowledgment of conformity, within the said space of three months then next following the said confirmation of his said license, to perform the said office of curate in the said church as he otherwise could, might, and would have done, and the said George in fact further saith, that the said Peter did not at any time whilst the said George so officiated and continued in his said office of curate, in the said church as aforesaid, object to his so officiating in the same, upon the ground of his not having read the said certificate of his said subscription of the said declaration or acknowledgment of conformity, or on any other ground whatsoever, but during all that time assented to, and acquiesced in his so officiating in the said church, and from time to time, and after the expiration of three months from his so subscribing such declaration or acknowledgment of conformity as aforesaid, paid him the said yearly sum or salary of fifty pounds, in the said first, second, and third Counts of the said declaration mentioned, to wit, at, &c.: and this he the said George is ready to verify, wherefore he prays judgment, and his damages by him sustained on occasion of the premises in the said first, second, and third Counts mentioned, to be adjudged to him, &c. &c.

V. LAWES.

IN AVOIDANCE—JOINT CONTRACT.

See the following statutes and authorities of the above replication, viz. the statutes of 13. & 14. Car. II. c. 4. f. 8. 9, 10, 11, 12.; 2. W. & M. f. 1. c. 8. f. 11.; 12. Ann. f. 2. c. 7.; 2. Geo. II. c. 31. f. 8.; and 23. Geo. II. c. 28. f. 1.; and the cases of *Martyn v. Hind*, Cowp. 437, and *Doug. 137*. *Lewis v. Milburn*, 3. Will. 355. *Powel v. Milbank* in the notes of fo. 399. of Term Reports, *Carver v. Pinkney*, 3. Lev. 82. and *Monk v. Butler*. 1. Roll. Reports, 83.

This plea may be objected to upon the following grounds, viz. First, for not stating a sentence of deprivation, and as to that he is referred to the 16th sect. of the stat. of Car. (which seems to recognize the necessity for such a sentence), and to the argument of Mr. Serjeant Glynn, in the case of *Powell v. Millbank*, together with *'Aylyff's Case Com. 309*. Secondly, as the declaration of conformity in 9. f. of the stat. of Car. is in part altered and abolished, not only by the 12. f. of the said act, but by the subsequent statute of 2. W. & M. in confirming the declaration to the stat. of Car. merely without taking any notice of the others, that in part alter and abolish the declaration as required by that act; and Thirdly, it is to be considered, whether the three months for reading the certificate ought not to be computed from the obtaining of such certificate, and not from the *subscription of the declaration* of conformity, and to have been so pleaded, for the subscriptions may be at one time, and the certificates at another, not within three months from the subscription of the declaration; and Fourthly, Whether as the third Count of the declaration is for the arrears of the salary merely, and does not expressly state them

to be such as arose after the disturbance of the plaintiff in his office, the plea founded on a disability during such disturbance, ought not to have averred that no part of the salary claimed in the 3d Count, became due prior to such disturbance, for otherwise it may have become due previous to that period, and then it may be questioned whether subsequent deprivation be an answer to it, and whether, under the circumstances stated, any advantage can now be derived from obtaining a certificate of a *lawful impediment* under stat. of 23. Geo. III.

And further, whether as the plaintiff, from the case of *Powell v. Milburn*, seems still open to put the defendant as the proof of non-conformity on the issue to the common Counts, is it, or is it not advisable to offer a replication upon the plea to the special Counts, or to abandon them, and rest upon the Count for money had and received? or whether it is better to demur to the plea, or whether it might not be worth while to hazard a general replication of *de injuria sua propria absque tali causa*, and under that replication (supposing an issue to be taken on it), contend that the defendant should prove the *verole* of his plea, which he is incapable of doing, the plaintiff having, in fact, obtained his certificate of the declaration or acknowledgment.

I Have drawn a replication on the circumstances of this case, rather with a view to the facts than as a replication to be abided by. Indeed this case is so singularly new and awkward, that it is difficult to devise on what the replication ought to be; on the whole, I am therefore more inclined in favour of a general one. V. LAWES.

OTHER PLEAS IN AVOIDANCE.

Plea in bar, that one of the plaintiffs was partner with the defendants, and therefore could not sue.

AND the said defendants by A. B. their attorney, come and defend their wrong and injury, when, &c. and say, that they did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the country, &c. and the said plaintiffs do so likewise; and for further plea in this behalf, they the said defendants by leave of, &c. according to, &c. say, *ad id non*, because they say, that the said several promises and undertakings in the said declaration mentioned (if any such was or were made) were and each of them was made by them the said defendants, together with the said W. M. one of the plaintiffs in this cause, jointly, and not by them

them the said defendants separately, from and without the said W. M. to wit, at, &c.: And this, &c. wherefore, &c. if, &c.

V. GIBBS.

Mr. Wood signed a demurrer to this, but declining arguing it, though the matter in dispute was upwards of twenty thousand pounds, so that the action was barred.

Mr. Gibbs first drew a plea in abatement, but afterwards pleaded this plea in bar.

1st. Non Assumpsit. But for further plea in this behalf, as to the said promise and undertaking in the said declaration mentioned, he the said George, by leave of, &c. says, *actio non*, because he says, that before the time of the making of the said promissory note in the said declaration mentioned, that is to say, by a certain inquisition taken at the session of the peace of oyer and terminer, and general goal delivery of our said lord the king's goal at Newgate, in the city of Bristol, and county of the same city, on, &c. in the eighteenth year of the reign of our sovereign lord George the third, by the grace, &c. before J. D. mayor of the said city, J. D. recorder of the said city, and M. S. esquire, one of the aldermen of the said city, and other their associates, justices of our said lord the king, assigned by virtue of certain letters patent of the lady Ann, late queen, &c. under the great seal of Great Britain, bearing date at Westminster, the twenty-fourth day of July, in the ninth year of the reign of the said late queen, granted and confirmed to the mayor, burgeses, and commonalty of the city aforesaid, and their successors, and by which said letters patent the said late queen willed, that the mayor, recorder, and aldermen of the city aforesaid for the time being, or any three or more of them (whereof the mayor and recorder of the said city for the time being to be two) should be such justices to enquire by the oaths of good and lawful men of the county of the said city of Bristol aforesaid, as well within the liberties as without, by whom the truth of the case might be the best known of all treasons, murders, ravishments of women, and other felonies whatsoever, as also of all trespasses and misdemeanors within the county, precinct, and liberties of the said city of Bristol, by whomsoever or howsoever done, perpetrated, and committed, and also all indictments whatsoever before the same justices of our said lord the king, or any other our late justices of our said lord the king, or any of them within the county of the city aforesaid, taken to hear and determine, and the goal of our said lord the king, of the county of the said city of Bristol, of the prisoners therein being to deliver, then and there sworn and charged to enquire as well for our said lord the king, as for the body of the said county of the said city of Bristol aforesaid: It was presented "that the said John, by the name and description of, &c. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c. with force and arms, at, &c. in, &c. upon one A. B. in the peace of

Plea (to a declaration on a promissory note, *indorse v. the maker*) that the plaintiff was tried at B. for murder, and sentenced to be hanged, which judgment is in full force.

Indictment for murder.

God, and our said lord the king, being then and there feloniously, wilfully, and of his malice afore-thought, did make an assault: and that the said John, a certain pistol of the value of five shillings, then and there charged and loaded with gunpowder, and one leaden bullet, which said pistol charged and loaded as aforesaid, he the said John in his right hand then and there had and held to against and upon the said A. B. and then and there feloniously, wilfully, and of his malice afore-thought, did shoot and discharge: and that the said John with the leaden bullet aforesaid, out of the pistol aforesaid, then and there by force of the gunpowder aforesaid, shot, discharged, and sent forth as aforesaid, the said John then and there feloniously, &c. did strike, penetrate, and wound giving to the said A. B. then and there with the leaden bullet so as aforesaid, shot, discharged, and sent forth out of the pistol aforesaid, by the said John, in and upon the left side of him the said A. B. one mortal wound of the depth of four inches, and of the breadth of half an inch, of which said mortal wound the said A. B. then and there immediately languished, and languishing then and there lived for three quarters of an hour, at the end of which said three quarters of an hour, on, &c. at, &c. the said A. B. of the mortal wound aforesaid died; and also the jurors aforesaid, upon their oath aforesaid, did say, that the said John then and there in manner and form aforesaid, feloniously, &c. did kill and murder, against the peace of our said lord the king, his crown and dignity," whereupon the sheriffs of the same city and county of the same city were commanded that they should omit not by reason of any liberty in their bailiwick, but that they should take the said John, if he might be found in their bailiwick, and him safely keep to answer our said lord the king, concerning the felony and murder whereof he stood indicted: whereupon afterwards, to wit, at the same session of peace of oyer and terminer, and general goal delivery of our said lord the king's goal of Newgate aforesaid, held as aforesaid, on, &c. in the eighteenth year of the reign of our said lord the king, came the said John, under the custody of C. D. and E. F. sheriffs of the city aforesaid, and county of the same city, in whose custody in the said goal of the said lord the king, in the city aforesaid, and county of the same city, for the cause aforesaid, he had been duly committed, and being brought to the bar there in his proper person was committed to the custody of the aforesaid sheriffs, &c. and forthwith of the premises aforesaid, in the indictment aforesaid above specified and charged, being asked in what manner he would acquit himself thereof, he the said John said, he was not guilty thereof, and concerning that for good and evil, he puts himself upon the country; and J. A. town-clerk of the said city, and county of the same city, who for our said lord the king prosecuted in that behalf, did so likewise; thereupon it was commanded that a jury should thereupon there immediately come before the said justices of the said lord the king, by whom the truth of the matter might be better known, and who had no affinity to the said John, to recognize upon their oath, whether

whether the said John was guilty of the said felony and murder in the aforesaid indictment mentioned, or not, because as well the said J. A. who prosecuted for our said lord the king in that behalf, as the said John, had put themselves upon that jury, and the jurors of that jury by the said sheriffs for that purpose duly impannelled and returned, to wit, T. D. &c. being called, came; and being chosen, tried, and sworn to speak the truth of and concerning the premises in the said indictment specified, upon their oath said, that the said John was guilty of the said felony and murder in the said indictment above specified, in manner and form as were therein charged against him, and that the said John at the time of the committing of the said felony and murder, or at any time since, had not any goods or chattels, lands or tenements, to the knowledge of the said jurors; and upon that the said John was asked by the Court there, whether he had any thing to say for himself, why the Court ought not to proceed to judgment upon the said verdict, who said nothing, besides what he had said before said, whereupon all and singular the premises being seen and understood by the Court there, it was considered by the Court there, that the said John should be hanged by the neck until he should be dead, on Wednesday the twenty-ninth of April, in the eighteenth year, &c. and that his body should be afterwards delivered to R. S. surgeon, to be dissected and anatomized; and the said sheriffs were commanded to take him, &c. to satisfy, &c. as by the record and proceedings thereof more fully appears: And the said defendant further says, that the judgment aforesaid, at the time of the making the said promissory note in the said first Count of the said declaration mentioned, and also at the time of the making the said indorsement thereon, in that Count mentioned, was in full force and effect, not reversed, annulled, discharged, made void, or pardoned by our said lord the king, to wit, at, &c. and the said defendant avers, that the said John in the said record mentioned, and the said John in the said first Count of the said declaration mentioned, are one and the same person, and not different, to wit, at, &c. and this, &c. wherefore he prays judgment, if the said John, as to the said promise and undertaking in the said first Count mentioned, ought to have, or maintain his aforesaid action thereof against him, &c.: And for further plea in this behalf, as to all the said promises and undertakings in the said declaration mentioned, the said defendant by leave of, &c. says, *actio non*, because he says, that the said John, long before the exhibiting the bill of him the said John, was, and still is indebted to him the said defendant, at, &c. in more money than at the time of exhibiting the bill of him the said John, was, and now is due and owing from the said defendant to the said John, by reason of the non performance of the several promises and undertakings in the said declaration mentioned, to wit, in the sum of one hundred pounds of, &c. upon and by virtue of a certain promissory note in writing, made and subscribed by the said John, and bearing date, &c. and delivered by the said John to one C. D. to wit, at, &c. whereby the said John, one month

Set-off of a promissory note given to plaintiff, and indorsed to defendant.

REPLICATION, &c. IN AVOIDANCE.

month after date, promised to pay to the said C. D. or order, the sum of ten pounds, as value received, and which said note, before the exhibiting of the bill of the said John, had been duly indorsed by the said C. D. to H. K. and by the said H. K. to one W. D. and by the said W. D. to the said defendant, and which said promissory note, at the time of exhibiting the bill to the said John was, and still is in full force: and also, &c. common articles of a set off, and common conclusion. G. WOOD.

Replication to
the last plea of
nul tiel record.

And the said John, as to the said plea of the said George, by him secondly above pleaded in bar, as to the said promises and undertakings in the said first Count of the said declaration mentioned, says that, *precludi non*, from having and maintaining his aforesaid action to recover his damages against the said George, by reason of the non performance of the said promise and undertaking in the said first Count of the said declaration mentioned, because he says, that there is not any such record of the conviction and attainder of the said John, as the said George hath above in pleading alledged: And this, &c. wherefore, &c. and his damages, by reason of the non performance of the said promise and undertaking in the said first Count of the said declaration mentioned, to be adjudged to him, &c. Issue on set off. S. LAWRENCE.

Rejoinder, *nul*
tiel record, and
prays a *certiorari*.

And the said George, as to the said replication of the said John, by him above made to the said plea of the said George, by him secondly above pleaded in bar, as to the said promise and undertaking in the said first Count of the said declaration mentioned, saith, that there is no such record of the conviction and attainder of the said John, as the said George hath above in pleading alledged; and this he is ready to verify by the record itself, now remaining in the custody of the said king's justices of oyer and terminer, and general goal delivery of the said king's goal of Newgate, in and for the said city of Bristol, and county of the same city; and hereupon the said George prays the king's writ of *certiorari* to be directed to the said justices, to certify to the said court of our said lord the king, before the king himself, whether there be such record of the conviction and attainder of the said John, as the said George hath above in pleading alledged or not, and it is granted returnable on , next after , next coming. G. WOOD.

See *Certiorari* Criminal Division, post.

Declaration for
work and la-
bour, goods sold,
&c. Plea, 1st,
Non assumptit.
2d, that defend-
ant entered into
a deed of com-
position with his creditors, to pay a pound rate in hand, and the remainder in four years, they cove-
nanting not to sue within four years. See Heathcote 9. Crookshanks, 2. T. Rep. 24. Cockshot and
Bennett, 2. T. Rep. 763.

AND the said Thomas Legall, by William Robert Duill his attorney, comes and defends the wrong and injury when, &c. and says, that he did not undertake or promise in manner and form as the said Saward and Thomas Andrews, have above thereof complained against him the said Thomas Legall; and of this he puts himself upon the country, &c.: And for further plea in this be-

half,

half, the said Thomas Legall, by leave of the Court here for that purpose first had and obtained, says, that the said S. and T. A. ought not to have or maintain their afore said action thereof against him, because he the said T. L. says, that before the said W. G. became a bankrupt, and before the day of suing forth the original writ of the said S. and T. against the said T. L. in this behalf, to wit, on the seventeenth day of September, in the year of Our Lord 1788, at Westminster afore said, in the said county of Middlesex, by a certain indenture of five parts, then and there made by and between the said T. L. by the name and description of Thomas Legall Yates, of Bury, in the county of Hants, purser of the Goliah ship of war, of the first part; one Richard Toulmin and one Oliver Toulmin (by the names and descriptions of Richard Toulmin and Oliver Toulmin, of Essex-street, in the Strand, in the county of Middlesex, esquires) of the second part; the several persons creditors and assignees of creditors of the said Thomas Legall Yates, whose names were there underwritten, of the third part; one Henry Papp (by the name and description of Henry Papps, of Clifford's Inn, London, gentleman) of the fourth part; and one Robert Huggins (by the name and description of Robert Huggins, of Portsmouth, in the county of Hants afore said, purser of his majesty's ship the Drake) of the fifth part; one part of which said indenture, sealed with the seals of the said William Grierfon and the seals of divers other persons who executed the said indenture, being creditors of the said T. L. he the said T. L. now brings here into court, the date whereof is the day and year in that behalf afore said, reciting, amongst other things, that the said T. L. was and stood justly indebted to the said R. T. and O. T. and unto his said several other creditors, in the several sums of money set opposite to their respective names to the said indenture subscribed, and which he was then unable to fully satisfy, and without time given him for that purpose, and which his said creditors had agreed to give him as thereafter mentioned; and the said T. L. had therefore proposed and agreed with his said creditors, parties thereto, to advance and pay unto them, at or before the execution of the said indenture, at and after the rate of eight shillings in the pound on the amount of their said respective debts, and for that purpose had applied to and requested the said R. T. and O. T. *to advance him the sum of seven hundred and fifty pounds, to enable him to pay and satisfy his creditors the afore said eight shillings in the pound*, which the said R. T. and O. T. had consented and agreed to be subject to the securities and assignments therein contained (amongst other things), That the said T. L. for the securing the repayment of the said sum of seven hundred and fifty pounds, so agreed to be lent and advanced to him by the said R. T. and O. T. as afore said, as well to secure them and all other his said creditors, parties thereto, the remaining twelve shillings in the pound, which would be due and owing unto them from and after payment of the said eight shillings in the pound in their respective debts, together with lawful interest thereon, respectively had with the privity and consent of all his said creditors, parties thereto,

COMPOSITION WITH CREDITORS, IN AVOIDANCE.

thereto, testified by their executing the said indenture, agreed to assign over unto them the said R. T. and O. T. all the household goods and effects of or belonging to him the said T. L. at Bury aforesaid, or elsewhere, as also two certain debts in the said indenture particularly mentioned, and likewise to direct, order, and appoint certain wages, prize-money, balance bills, tobacco money, commission on slops, and other monies, profits, and emoluments, due and payable to him the said T. L. in the said indenture particularly mentioned, to be had and received by the said R. T. and O. T. as agents for him the said T. L. and to be paid and applied in manner thereafter for that purpose particularly mentioned: It was by the said indenture witnessed, that the said T. L. for the considerations aforesaid, and also in consideration of ten shillings of lawful money of Great Britain, to him in hand well and truly paid by the said R. T. and O. T. at or before the sealing and delivery of the said indenture, the receipt whereof was thereby acknowledged, granted, bargained, sold, assigned, and set over unto the said R. T. and O. T. all and singular the said household goods and implements of household of every kind then standing and being in and upon the said house and premises of him the said T. L. at Bury aforesaid, or elsewhere, and also the said two several debts or sums of money so as aforesaid due and owing, as in the said indenture is particularly mentioned, to have, hold, receive, take, and enjoy, the said household goods and implements of household, debts or sums of money, and premises thereby assigned, or intended so to be, unto the said R. T. and O. T. their executors, administrators, and assigns, from thenceforth, as and for their own proper goods, monies, and effects, for ever; but nevertheless upon the several trusts, and for the intents and purposes, thereafter particularly mentioned and declared; and the said T. L. did thereby authorize, order, direct, and appoint, the said R. T. and O. T. or the survivor of them, or the executor or administrator of such survivor, by and out of the monies to be received by them or him from time to time, from any person or persons whomsoever, for or on account or as agent of him the said T. L. as purser of the said ship Goliah, or of any other ships, or in whatever capacity the said R. T. and O. T. might act as agents for the said T. L. as such purser or other officer on board the said ship Goliah, or any other ship, to apply the same, and every part thereof, to and for, and upon the several trusts, uses, intents, and purposes, in the said indenture particularly mentioned and set forth; and the said R. T. and O. T. and also the said several other creditors of the said T. L. parties thereto, for themselves, their heirs, executors, administrators, and assigns, thereby amongst other things, did covenant, promise and agree, to and with the said T. L. his executors and administrators, by the said indenture, that if it should happen that the monies to be received by them the said trustees should not be sufficient to pay, satisfy, and discharge the said remaining twelve shillings in the pound, with interest as aforesaid, at the expiration of four years from the date thereof, by reason of the said ship Goliah being out of commission, or the removal of the said

T. L.

T. L. or any other inevitable circumstance or occurrence which might happen without his default, it was the true intent and meaning of the said parties thereto, and of the said indenture, that it should and might be lawful to and for the said T. L. to go about and transact his business and affairs from the date of the said indenture, for the said term of four years, without any suit, arrest, molestation, or hindrance of or by the said R. T. and O. T. or the said several other creditors, parties thereto, their respective executors, administrators, or assigns; and if it should happen that the said T. L. should be arrested, sued, attached, or molested, by the said trustees, or by the said several other creditors executing the said indenture, their executors, administrators, or assigns, or any of them, for any such debt or demand, within the said term of four years, that then and from thenceforth the said executor or administrator should be absolutely freed and discharged against him or them by whom or by whose means, privity, or procurement, he should be so arrested, attached, or molested, of and from his, her, or their debt or debts, and all other claims and demands whatsoever, to him, her, or them, from the said T. L. due and owing on any account, or for any matter or thing whatsoever, previous to the day of the date of the said indenture; and at the bottom of the said indenture, opposite to the name and seal of the said W. G. was set the sum of thirty-two pounds ten shillings, as by the said indenture, relation being thereunto had, will amongst other things more fully and at large appear: And the said T. L. in fact further saith, that the said W. G. the bankrupt in the said declaration, and the said W. G. who executed the said indenture, are one and the same person, and not other or different persons; and that the said debt or demand for which the said action of the said S. and T. A. assignees as aforesaid, is brought, and the said sum of money set opposite the name of the said William Grierson, in the said indenture, and for which he the said W. G. as a creditor of the said T. L. did execute the said indenture, are one and the same debt or demand, and not other or different, and that the said debt or demand so set opposite to the name of the said W. G. in the said indenture, and for which this action is brought, was due and owing from the said T. L. to the said W. G. previous to the day of the date of the said indenture, to wit, at Westminster aforesaid, in the said county of Middlesex; and this he the said T. L. is ready to verify: wherefore he prays judgment if the said S. and T. A. ought to have or maintain their aforesaid action thereof against him, &c. SAM. MARSHALL.

Plaintiffs considered this plea as a complete bar to the action, and therefore gave it up.

Michaelmas Term, 33. Geo. 3.

REES } AND the said David, by James Phillips his attorney, comes and defends the wrong and injury when, *versus* } &c. and says, that he did not undertake and prosecute his creditors, under an order of the chancellor of Maryland, by virtue of an act of assembly, mise

Plea, that defendant assigned his property for the benefit of the benefit of assembly.

Recite the act
of assembly.

mise in manner and form as the said George Vausant hath above thereof complained against him; and of this he puts himself upon the country, &c. : And for further plea in this behalf, *in discharge of the person, estate, and effects*, of or belonging to the said David, save and except any property if any there be after the date of a certain deed, bearing date the fifteenth day of January, in the year of Our Lord 1788, and hereinafter mentioned, acquired, or to be acquired, by the said David, by descent, devise, bequest, or in course of distribution, he the said David, by leave of the Court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that by a certain "act of the general assembly of the state of Maryland, the same act being a law of the same state made and passed at the session of the said assembly begun and held on Tuesday the tenth day of April 1787 at the said city of Annapolis," intituled, "An Act respecting Insolvent Debtors," it was, among other things, enacted, that every debtor for any sum above three hundred pounds current money might apply, by petition in writing, to the chancellor (meaning the chancellor of the said state), and offer to deliver up to the use of his creditors, all his property, real, personal, and mixed, and to which he was in any manner entitled, a schedule whereof, on oath or affirmation, together with a list of creditors, as far as he could ascertain the same, should be exhibited with and annexed to such petition; and thereupon the chancellor might direct personal notice of such application to be given to the creditors, or as many of them as could be served therewith, or he might direct notice of such application to be published in the public newspapers for such time as he might think proper, and on their appearance, or neglect to appear on notice, at the time, or time and place appointed, the chancellor might administer the following oath, to wit, "I A. B. do swear (or solemnly, sincerely, and truly, declare and affirm), that I will deliver up, convey, and transfer to my creditors, in such manner as the chancellor shall direct, all my property that I have, or claim any title to, or interest in, at this time in the world, and all debts, rights, and claims, which I have at this time, or to which I am in any respect entitled to, in possession, remainder, or reversion; and that I have not directly or indirectly, at any time before, sold, conveyed, leased, disposed of, or entrusted any part of my property, debts, rights, or claims, thereby to defraud my creditors, or any of them, or to secure the same to expect any profit, benefit, or advantage thereby;" and that the chancellor should thereupon appoint a trustee or trustees on behalf of the creditors, and should direct such debtor to execute a deed to such trustee or trustees for all his property, debts, rights, and claims, agreeable to the oath or affirmation of such debtor, in trust for his creditors; and thereupon, and upon the execution of the said deed, and after the delivery of the property, books, bonds, and other evidences of debts, to such trustee or trustees, and his or their certificate of such delivery, the chancellor might order that such debtor should for ever thereafter be acquitted and discharged from all debts by him owing or contracted

at any time before the date of such deed; and in virtue of such order, such debtor should be for ever discharged from all debts due or contracted before the date of such deed, provided that any property thereafter acquired by such debtor, by descent, devise, bequest, or in course of distribution, should be liable to the payment of his debts, to wit, at London aforesaid, in the parish and ward aforesaid: And the said David further says, that after the making and passing of the said act of assembly, to wit, on the first day of May, in the year of Our Lord 1788, at the said city of Annapolis, the said David being then and there a debtor for a sum of money above three hundred pounds current money of the said state of Maryland, according to the said act, did apply, by petition in writing, to the chancellor of the said state, and offer to deliver up to the use of his creditors all his property, real, personal, and mixed, and to which he was in any manner entitled, a schedule whereof (on oath (1), together with a list of creditors, as far as he could ascertain the same, was exhibited with, and annexed to, the said petition: and thereupon the said chancellor, according to the said act, did give such notice to the creditors of the said David as by the said act is required, and did administer to the said David the said oath by the said act of assembly directed to be administered: and thereupon the said chancellor, according to the said act, did appoint one William M'Laughlin, trustee on behalf of the said creditors of the said David, and did direct the said David to execute a certain deed to the said William M'Laughlin for all his the said David's property, debts, rights, and claims, agreeable to the oath of the said David, in trust for his creditors: and thereupon the said David according to the said act, in compliance with the said direction of the said chancellor, on the fifteenth day of May, in the year of Our Lord 1788, at Annapolis aforesaid, did execute to the said William M'Laughlin, so being trustee for the said creditors of the said David, a deed bearing date the said fifteenth day of July 1788, of all the property, debts, rights, and claims, of him the said David, agreeable to his said oath, in trust for his said creditors, and did then and there deliver up to the said William M'L. so being such trustee as aforesaid, in trust for his said creditors, all the property, books, bonds, and other evidences of debts, of him the said David; and the said William M'Laughlin afterwards, to wit, on the same day and year last aforesaid, did certify to the said chancellor the delivery of the said property, books, bonds, and other evidences of the debts of him the said David to him the said William M'Laughlin, in trust for the creditors of the said David: and thereupon the said chancellor did then and there, according to the said act, order that the said David should for ever thereafter be acquitted and discharged from all debts by him the said David owing or contracted at any time before the date of the said deed, so by him the said David to the said William M'Laughlin executed as aforesaid, except that any property acquired by the said David from and after the date of the said deed, by descent, devise, bequest, or in course of distribution, should be liable to the payment of the debts of him the said David,

Defendant petitioned the chancellor of the state, &c. &c. &c. according to the act.

(1) or "on affirmation of defendant, being a quaker."

Deed executed a trustee for creditors, dated 15 July 1788.

Chancellor's order.

Averment, that both parties were inhabitants of the state, and the plaintiff's debt there contracted.

3d Plea more general than the last, and in total bar, the other being only a partial bar.

David, to wit, at London aforesaid, in the parish and ward aforesaid: *And the said David avers*, that he the said David and the said plaintiff, at the time of the accruing of the said several causes of action in the said declaration mentioned, and until and at the time of the said order of discharge, were inhabitants and resident in the said state of Maryland, and that the said several causes of action accrued within the said state, and were owing and contracted before the date of the said deed so executed by the said David to the said William M^cLaughlin, in trust for the creditors of the said David as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid; and this he the said David is ready to verify: wherefore he prays judgment, and that his person, estate, and effects, save and except any property, if any there be after the date of the said deed acquired, or to be acquired, by descent, devise, bequest, or in course of distribution, may be discharged, &c. *And for further plea in this behalf the said David*, by like leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that after the making and passing of the said act of assembly, to wit, on the first day of May, in the year of Our Lord 1788 aforesaid, in the city of Annapolis, the said David being then and there a debtor for a sum of money above three hundred pounds current money of the said state of Maryland, according to the said act, did apply by petition in writing to the chancellor of the said state, and offer to deliver up to the use of his creditors all his property, real, personal, and mixed, and to which he was entitled, a schedule whereof on oath, together with a list of creditors, so far as he could ascertain the same, was exhibited with and accrued to the said plaintiff: and thereupon the said chancellor, according to the said act, did give such notice to the creditors of the said David as by the said act is required, and did administer to the said David the said oath by the said act of assembly directed to be administered: and thereupon the said chancellor, according to the said act, did appoint one William M^cLaughlin, a trustee on behalf of the said creditors of the said David, and did direct the said David to execute a deed to the said William M^cLaughlin for all the said David's property, debts, rights, and claims, agreeable to the said oath of the said David, in trust for his creditors: and thereupon the said David, according to the said act, in compliance with the said direction of the said chancellor, on the fifteenth day of July, in the said year of Our Lord 1788, at Annapolis aforesaid, did execute to the said William M^cLaughlin, so being trustee for the said creditors of the said David, a deed bearing date the fifteenth day of July 1788, of and for all the property, debts, rights, and claims, of him the said David, agreeable to his said oath, in trust for his creditors, and did then and there deliver up to the said William M^cLaughlin, so being trustee as aforesaid, in trust for his said creditors, all the property, books, bonds, and other evidences of debts of him the said David; and the said William

William M^cLaughlin afterwards, to wit, on the day and year last aforesaid, did certify to the said chancellor the delivery of the said property, books, bonds, and other evidences of debts, of the said David, by him the said David to him the said William M^cLaughlin, in trust for the creditors of him the said David : and thereupon the said chancellor did then and there, according to the said act, order that the said David should for ever after be acquitted and discharged from all debts by him the said David owing and contracted at any time before the date of the said deed so by him the said David to the said William M^cLaughlin executed as aforesaid (except that any property acquired by the said David from and after the date of the said deed, by descent, devise, bequest, or in course of distribution, should be liable to the payment of the debts of him the said David), to wit, at London aforesaid, in the parish and ward aforesaid. And the said David avers, that he the said David and the said J. G. at the time of the accruing of the said several causes of action in the said declaration mentioned, and until and at the time of the said order and discharge, were inhabitants and residents in the said state of Maryland, and that the said several causes of action accrued within the said state, and were owing and contracted before the date of the said deed, so executed by the said David to the said William M^cLaughlin, in trust for the creditors of him the said David as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid : And the said David avers, that he hath not since the date of the said deed acquired any property by descent, devise, bequest, or in course of distribution ; and this he the said David is ready to verify : wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

GEO. WOOD.

I think the plea of delivering up his effects in satisfaction will be of no use independant of the efficacy it derives under the act ; therefore I have omitted it, and pleaded two pleas adapted to the act, one as a partial bar, the other as a total bar, averring, that defendant has not acquired any property by descent, &c.

The property defendant acquired by his wife, I apprehend, does not fall within the exception.

It is necessary in the pleas to set out the acts, as the court here cannot take judicial notice of the laws of other states. The order of discharge does not mention even the date of the deed, or recite any of the antecedent proceedings ; therefore it may probably be necessary to amend the pleas hereafter ; but that cannot be determined upon till plaintiff hath replied, when it will be seen what issue he takes.

G. WOOD.

In the Common Pleas, Trinity Term, 29. Geo. 3.

PLAISTOW, ESQ.

at the suit of

STACIE.

AND the said Richard, by William Barnett, his attorney, comes and defends the wrong and injury, when, &c. ; and as to the sum of thirteen pounds eleven shillings and sixpence, parcel of the said several sums of money in the said declaration mentioned, says, that he cannot deny the said action of the said John in that respect, nor but that he the said Richard did undertake and promise in manner and form as the said John hath above thereof complained against

Confession on the action as to part, and *non assumpsit* as to the residue ; with judgment as to the part confessed.

NIL HABUIT IN TENEMENTIS.

against him, not but that the said John hath sustained damage by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned as to the said sum of thirteen pounds eleven shillings and sixpence, that is to say, to the amount thereof, over and above his costs and charges by him about his suit in that behalf expended ; and as to the residue of the said several sums of money in the said declaration mentioned the said Richard says, that he did not undertake and promise in manner and form as the said John hath above thereof complained against him ; and of this he puts himself upon the country, and the said John doth the like : and inasmuch as the said Richard hath not denied the said action of the said John as to the sum of thirteen pounds eleven shillings and sixpence, part of the said several sums of money in the said declaration mentioned, but admits the same to be true, and that the said John hath sustained damage on occasion of the non-performance of the said promises and undertakings in the said declaration mentioned, as to that money, to the amount thereof, that is to say, to thirteen pounds eleven shillings and sixpence over and above his costs and charges in that behalf, the said John prays judgment for those damages over and above his costs and charges : therefore it is considered, that the said John recover such damages against the said Richard over and above his costs and charges in that behalf : but because it is convenient that there be but one taxation of damages in this suit, therefore let all further proceedings as to their costs and damages stay until after the trial of the said issue above joined between the parties ; and to try the said issue, so joined between the said parties, the sheriff is commanded that he cause to come here in twelve, &c. by whom, &c. who neither, &c. to recognize, because as well, &c.

V. LAWES.

Plea of *nil habuit in tenementis* to action for use and occupation.

BENTHAM, ESQ.

at the suit of

CLERKE, EXECUTOR, &c.

AND said defendant, by, &c. his attorney, comes and defends the wrong and injury, when, &c. ; and as to the promise and undertaking in said declaration above mentioned says, that said plaintiff *aditio non*, because protesting, that he made no such promise as in said declaration is above supposed ; for plea in this behalf says, that said John Leach (the plaintiff's testator) in his lifetime had no estate or interest of or in the said messuage or dwelling-house, coach-houses, stables, with the appurtenances, in said declaration mentioned, or in any part thereof, at any time that in and by the said declaration is above supposed, that said defendant held, used, occupied, possessed, and enjoyed the same ; and this said defendant is ready to verify : wherefore he prays judgment if said plaintiff ought to have or maintain his aforesaid action against him, &c.

J. WALLACE.

AND

AND for further plea, as to the first, second, third, fourth, fifth, sixth, seventh, and eighth promises and undertakings in the said declaration mentioned, he said defendant, by leave, &c. says, that said plaintiff *actio non*, because he saith, said several bills of exchange in said first, &c. &c. Counts of said declaration mentioned (if any such were drawn by said defendant and delivered by him to said plaintiffs), were drawn by said defendant, and delivered by him to said plaintiff for the purpose of paying off and discharging a certain sum of money, to wit, the sum of two hundred and fifty-two pounds, before that time claimed by said plaintiff to be due and owing to him from said defendant for a large quantity of a certain commodity, to wit, tea, before that time sold and delivered to said defendant by him said plaintiff, and which tea had before that time been smuggled and brought into this kingdom without ever having paid the duty which on the importation of the same into this kingdom was, according to the laws and statutes of this realm, of right due and payable to our sovereign lord the now king, and ought to have been paid, to wit, by said plaintiff, for said tea, and which said duty was then, and still is, wholly due, in arrear, and unpaid, unto our said lord the now king, and for no other consideration whatsoever, and so said plaintiff well knew at the several and respective times of the making of said several bills of exchange, and of the delivery thereof to him said plaintiff by said defendant, and of his accepting and taking said bills, to wit, &c. *aforsaid*: wherefore the pretended consideration for said bills of exchange, and for each and every of them, was and is void in law; and therefore, by reason of the premises, the said several bills of exchange in said first, second, &c. &c. Counts of said declaration mentioned, and the several promised in those Counts mentioned, were, and each of them was and is, wholly void in law, and of no force and effect, to wit, at, &c. *aforsaid*; and this, &c.: wherefore, &c. if, &c. J. MORGAN.

That smuggled goods were the consideration of the bills of exchange.

Vide Black. Rep.
445.

I do not think this plea good in point of law, but you may see what plaintiff will do.

J. MORGAN.

AND the said William C. S. by Thomas C. his attorney, comes and defends the wrong and injury, when, &c. and says, that true it is that such discourse was moved and had by and between the said Charles C. Richard L. and Thomas R. and the said W. C. S. and that he the said W. C. S. did undertake and promise in manner and form as the said C. C. R. L. and T. R. have above thereof, in and by their said declaration alledged: But the said W. C. S. says, that the said C. C. R. L. and T. R. ought not to have their *aforsaid* action thereof maintained against him; because he says, that he the said W. C. S. was not a bankrupt within the true intent and meaning of the several statutes made relating to bankrupts, at the time of the issuing of the said commission of bankrupt against the said W. C. S. as the said C. C. R. L. and T. R. have above and by their said declaration alledged; and of this he puts himself upon the country, and the said C. C. R. L. and T. R. do the like, &c.: therefore let a jury come before our lord the king at Westminster, on Thursday next after eight days of the king

Pleto an action on a feigned issue to the bankrupt *vel non*.

PLEAS IN ASSUMPSIT. REPLICATION.

Purification of the Blessed Virgin Mary, by whom, &c. who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties at the same place. THOS. WALKER.

PLEAS IN DISCHARGE
ACCORD AND SATISFACTION.

Plea (to a declaration at the suit of assignees of a bankrupt) that after the making the promise mentioned in the declaration, defendant gave the bankrupt a bond in discharge of those promises.

1st. *Non Assumpsit*. And for further plea in this behalf, the said defendant by leave, &c. *action non*, because he saith, that he said defendant, after the making of the said several promises and undertaking in the said declaration mentioned, and before said J. F. so became a bankrupt as aforesaid, and also before the exhibiting of the bill of said plaintiffs as such assignees as aforesaid, against him said defendant, to wit, on, &c. made and sealed, and as his act and deed delivered unto the said J. F. a certain writing obligatory in the penal sum of three hundred pounds, conditioned for the payment of one hundred and fifty pounds of lawful, &c. at fifteen pounds every six months, the first payment thereof to be made on, &c. and which said writing obligatory said defendant then and there before said J. F. so became a bankrupt as aforesaid, delivered unto him said J. F. in full satisfaction and discharge of the said several promises and undertakings in the said declaration mentioned, and said J. F. then and there before he so became bankrupt, accepted and received the said writing obligatory from the said defendant, in full satisfaction and discharge of the said several promises and undertakings in the said declaration mentioned; and this he the said George is ready to verify, wherefore, &c. if, &c.

GEO. WOOD.

Replication to the last plea, that A. B. (the bankrupt) being insolvent, the bond was given with a fraudulent view to delay the payment of the debt, and to keep same from the creditors, stating that a commission issued, and that the plaintiffs were chosen assignees.

And the said plaintiffs, as to the said plea of said defendant, by him lastly above pleaded in bar, say, that they by reason of any thing by said defendant above in that plaintiff alledged, ought not to be barred from having and maintaining their aforesaid action thereof against him, because they say, that after the making of the said promises and undertakings in the said declaration mentioned, and before and at the time of the making and delivering of the said writing obligatory, in the said plea of said defendant above pleaded in bar mentioned, and before the actual suing out of any commission of bankrupt against said J. F. he said J. F. was indebted to divers persons, in divers large sums of money, and was insolvent and unable to pay his creditors, and was likely to become a bankrupt; and being so insolvent, and unable to pay his creditors, and being likely to become a bankrupt, he said J. F. afterwards, and before the making of the said writing obligatory in the said plea mentioned, to wit, on, &c. at, &c. gave notice thereof to the said defendant, and the said defendant then and there being indebted to said J. F. in a large sum of money, upon and by virtue of the promises and undertakings in the said declaration mentioned, then

then and there due and payable to said J. F. it was then and there fraudulently and by the covenant of said J. F. and defendant, then and there had between said J. F. and defendant, in order to delay the payment of the said money so due and owing from said defendant to said J. F. and to keep the same from the creditors of said J. F. for a long time, to wit, for the respective times in the said plea mentioned, and in view and contemplation of the bankruptcy of said J. F. agreed between the said J. F. and the said defendant, that the said J. F. should give time for payment so due and owing from the said defendant to the said J. F. on the promises and undertakings in the said declaration mentioned; and the said defendant should make and execute to said J. F. the said writing obligatory, in the said plea mentioned, for the payment of the said money so due and owing to said J. F. as aforesaid, by the said instalments in the said plea mentioned; and said plaintiffs further say, that the said J. F. remained and continued so insolvent and unable to pay his creditors, from the time of the making and delivering the said writing obligatory until the suing out of the commission of bankrupt herein after mentioned, to wit, &c.; and said plaintiffs further say, that said J. F. almost immediately after the making of the said writing obligatory, to wit, on, &c. at, &c. did absent himself from his dwelling house, in order to delay his creditors of their just and true debts; and thereupon said J. F. being a subject of this kingdom, and then for a long time before using and exercising the trade of merchandize, by way of bargaining, exchanging, bartering, and seeking his trade of living by buying and selling, and being indebted unto said Benjamin and one A. C. in the sum of, &c. of lawful, &c. and upwards, for a true and just debt, due and owing from said J. F. to them as aforesaid, and to divers persons in divers large sums of money, to wit, on, &c. at, &c. the aforesaid debt to said B. and A. C.; and the said other debts then and still being due, and no ways paid or satisfied, he said J. F. became a bankrupt, within the true intent and meaning of the several statutes concerning bankrupts made and provided: and said J. F. so being and continuing a bankrupt as aforesaid, and the said debts so remaining unpaid and unsatisfied afterwards, to wit, on, &c. on the petition of B. and A. C. as well for themselves, as all other the creditors of said J. F. made and exhibited in writing, according to the form of the statute in such case made and provided to the right honourable lord Thurlow, then and still being lord high chancellor of Great Britain, a certain commission of our lord the now king, sealed with the great seal of Great Britain, in due manner issued out of his majesty's high court of chancery, the said court then and still being at Westminster, in, &c. against said J. F. directed to A. H. J. L. P. J. H. H. esquires, and J. W. gentleman, by which said commission our lord the king did name, assign, and appoint, constitute, and ordain them said A. H. &c. his special commissioners, thereby giving full power and authority to the said commissioners, or any four or three of them, to proceed according to the statute in the said commission specified, and all

One of the
plaintiffs.

other statutes in force concerning bankrupts, not only concerning the bankrupt, his body, lands, tenements, freehold, and customary goods, debts, and other things whatsoever, but also concerning all other persons who by concealment, claim, or otherwise, did, or should offend touching the premises in the said commission specified, or any part thereof, contrary to the true intent and meaning of the same statute, and to do and execute all and every thing and things whatsoever, as well for and towards satisfaction and payment of the said creditors, as towards and for all other intents and purposes according to the ordinance and revisions of the same statute, the said lord the king by the said commission, willing and commanding the said A. H. &c. and four or three of them to proceed to the execution and accomplishment of the said commission, according to the true intent and meaning of the statute, with all due diligence and effect as by the said commission more fully appears, which said commission is still in due force and effect, by virtue of which said commission, and by force of the several statutes said P. J. &c. three of the commissioners named in the said commission afterwards, to wit, on, &c. at, &c. in due form of law did adjudge and declare, that said J. F. before the date and suing forth of the said commission against him, became and was a bankrupt, within the true intent and meaning of the several statutes then in force concerning bankrupts, some or one of them adjudged and declared him a bankrupt accordingly, to wit, on, &c. at, &c. and said plaintiffs further say, that afterwards, to wit, on, &c. at, &c. said J. F. then remaining and continuing a bankrupt, the said P. J. &c. three of the commissioners in the said commission named, by certain indentures then and there made between one T. V. of the first part, the said P. J. &c. of the second part, and said plaintiffs then and there being creditors of the said J. F. of the third part, the second part of which said indenture, sealed with the seals of said P. J. &c. the said plaintiffs now bring here into court, the date whereof is, &c. bargained, sold, assigned, and transferred to said plaintiffs, among other things, all the debts and sums of money due and owing to the said J. F. in trust; nevertheless for the use and benefit of said plaintiffs, and all other the creditors of said J. F. who then had demanded, or afterwards should in due time come and demand relief by virtue of the said commission, and should contribute towards the expences of the same according to the limitations of the aforesaid statutes; and so said plaintiffs say, that the said agreement between said J. F. and said defendant, in the plea of said defendant lastly above pleaded in bar mentioned, and the said writing obligatory in that plea mentioned are void and against law, and this they are ready to verify; wherefore they pray judgment and their damages, by reason of the not performing the said promises and undertakings in the said declaration mentioned, to be adjudged to them, &c.

WILLIAM BALDWIN.

JOHNSON

JOHNSON } 1st. Plea. *Non assumpsit*. And for further plea, as to the four first promises and undertakings agreed between plaintiff and defendant, that the promises in declaration mentioned, and above supposed to have been made by the said defendant, he the said defendant by leave, &c. *actio non*; because he saith that the said several walls in the four first Counts of the said declaration mentioned, and thereby alledged to have been pulled down by the said defendant, were and are one and the same wall, and not divers or different walls, and that after the making of the said four first promises and undertakings in the said declaration mentioned, and before any breach thereof, or of any or either of them, and before the pulling down of the said wall so pulled down by the said defendant as aforesaid, to wit, on, &c. at, &c. it was agreed by and between the said plaintiff and defendant, that the said four first promises and undertakings in the said declaration mentioned, and the performance thereof, should be from thenceforth waived by and between them the said plaintiff and defendant, and that the said defendant should be at liberty to pull down the said wall so by him pulled down as aforesaid, and that in consideration thereof the said defendant should then and there give and pay to the said defendant, a certain large sum of money, to wit, the sum of five pounds five shillings, of lawful money of Great Britain; and the said defendant in fact further saith, that the said agreement being so made between him the said defendant and the said plaintiff, the said plaintiff did in pursuance thereof, then and there to wit, on, &c. at, &c. and before the said wall was so pulled down by him the said defendant, as aforesaid, waive and discharge him the said defendant of and from the said four first promises and undertakings in the said declaration mentioned, and from the performance thereof, and did also then and there give liberty, and leave and licence to the said defendant to pull down the said wall, and he the said defendant did in consideration thereof, and in pursuance of the said agreement, then and there give and pay to the said plaintiff such sum of money as aforesaid, that is to say, the said sum of five pounds five shillings, of lawful money of Great Britain, so agreed to be paid and given by him as aforesaid, which said sum of five pounds five shillings the said plaintiff then and there took, accepted, and received of and from him the said defendant as a consideration for such liberty to pull down the said wall as aforesaid, and as and by way of satisfaction or equivalent for the damage to be thereby done to or sustained by him the said plaintiff; and this, &c. wherefore, &c. if, &c. his aforesaid action, as to the said four first promises and undertakings in the said declaration mentioned against him, &c. and for further plea, as to the four first promises and undertakings in the said declaration mentioned, and above supposed to have been made by the said defendant, he the said defendant, by like leave, &c. *actio non*; because he saith, that the said several supposed walls in the said four first Counts of the said declaration mentioned were and are one and the same wall, and not divers or different walls, and that he the said defendant after the making of the said four first promises

ACCORD AND SATISFACTITION.—REPLICATION.

promises and undertakings in the said declaration mentioned, to wit, on, &c. gave and paid to the said plaintiff a certain large sum of money, to wit, the sum of five pounds five shillings, of lawful money of Great Britain, in satisfaction and discharge of the said four first promises and undertakings in the said declaration mentioned, and of all damages to be sustained by the said plaintiff, by reason or in consequence of pulling down the afore said wall; which said sum of five pounds five shillings, he the said plaintiff then and there took, accepted, and received of and from the said defendant, in satisfaction and discharge of the said four first promises and undertakings in the said declaration mentioned, and of all damages to be sustained by the said plaintiff by reason or in consequence of pulling down the afore said wall; and this, &c. wherefore, &c. if, &c.

V. LAWES.

Replication and issue to the last plea, that true it is, that the walls are the same, protesting that plaintiff did not waive &c. promises, and that defendant did not pay, nor did plaintiff accept said 5l. 5s. in satisfaction of the damages done to plaintiff. Replication that it was not agreed as is mentioned in plea.

And the said plaintiff, as to the said plea of the said defendant, by him secondly above pleaded in bar as to the four first promises and undertakings in the said declaration mentioned and above made by the said defendant, says, that he the said plaintiff ought not to be barred from having or maintaining his afore said action thereof against him the said defendant; because he saith, that though true it is that the said several walls in the said four first Counts of the said declaration mentioned were and are one and the same wall, and not divers or different walls, as the said defendant hath above in that plea alledged: Yet, protesting that he the said plaintiff did not waive or discharge the said defendant of and from the said four first promises and undertakings in the said declaration mentioned, and from the performance thereof, or of or from any or either of them; and that he the said defendant did not give or pay to the said plaintiff, nor did he the said plaintiff take, accept, and receive of and from him the said defendant the said sum of five pounds five shillings in the said second plea mentioned, as or by way of satisfaction or equivalent for the damage to be done to or sustained by him the said plaintiff by pulling down of the wall as in the said second plea is in that behalf alledged. For replication in this behalf he the said plaintiff saith, that it was not agreed by and between him the said plaintiff and the said defendant in manner and form as the said defendant hath above in his said second plea in that behalf alledged; and this he the said plaintiff prays may be enquired of by the country, and the said defendant doth the like. And as to the said plea of, &c. *precludi non*; because he saith, that though true it is, that the said several supposed walls in the said four first Counts of the said declaration mentioned, were and are one and the same wall, and not divers or different walls, as the said defendant hath above in his said third plea in that behalf alledged: Yet, protesting that the said defendant did not give or pay to the said plaintiff the said sum of five pounds five shillings in the said third plea mentioned, in satisfaction and discharge of the said four first promises and undertakings in the said declaration mentioned, and of all damages to be sustained by the said plaintiff,

by

by or in consequence of pulling down the aforesaid wall, as the said defendant hath above in his said third plea in that behalf alledged. For replication in this behalf he the said plaintiff saith, that he the said plaintiff did not take, accept, or receive the said sum of five pounds five shillings of and from him the said defendant in satisfaction and discharge of the said four first promises and undertakings in the said declaration mentioned, and of all damages to be sustained by the said plaintiff, by reason and in consequence of pulling down the aforesaid wall, in manner and form as the said defendant hath above in his said third plea in that behalf alledged; and this he the said plaintiff prays may be enquired of by the country, and the said defendant doth the like, &c.; therefore, as well to try this issue, as the several other issues above joined between the parties aforesaid, the sheriff is commanded that he cause to come here in twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

V. LAWES.

(ACTIO NON); because he says, that after the making of the said several promises and undertakings in the said declaration mentioned, and before the commencement of this suit, to wit, on the first of August 1765, at Westminster aforesaid, in the county aforesaid, an account was had and stated by and between the said Hugh and Alexander, of and concerning the said several sums of money in the said declaration above mentioned, and divers other sums of money then due and owing from the said H. to the said A. and upon that account the said A. was then and there found in arrear to the said Hugh in ten pounds of, &c. of which said sum of ten pounds he the said A. then and there made and signed his promissory note in writing to the said H. by which said note the said A. promised to pay to the said H. or his order, upon demand, the sum of ten pounds, for value then mentioned to be received by the said A.; and the said A. then and there delivered the said note to the said H. and the said H. afterwards, to wit, on the day and year above said, at Westminster aforesaid, in the county aforesaid, by his indorsement, in writing by his own hand signed on the said note, so given to him by the said A. as aforesaid, appointed the contents of the said note to be paid to the said William Parks, or his order, for value received; by reason whereof the said A. became liable, and still is liable, to pay the said William the said sum of ten pounds: And this, &c. wherefore, &c.

Plea of promissory note given for the money due on the promises in the declaration.

I apprehend this is a good plea, because of the indorsements; if the plea in bar had been only as to the note given by the defendant to the plaintiff, it would perhaps be doubtful. A promise to pay a sum of money at another day is no dis-

charge of the action, or that one bond was given for another. A payment of part and promise to pay the rest at a future day held good. Cro. El. 204, 205. Mod. 136.

Plea that defendant gave plaintiff two pieces of broad cloth on satisfaction, &c.

AND the said defendant, by his attorney, comes and defends the wrong and injury, when, &c. and says, that the plaintiff (*actio non*); because he saith that the said defendant, after the making of the said several promises and undertakings in the said declaration mentioned, and of each of them, and before the exhibiting the bill of the said plaintiff, to wit, on the day of A. D. afore said, at, &c. afore said, gave and delivered unto him the said plaintiff two pieces of broad cloth, in full satisfaction and discharge* of the said several promises and undertakings of him the said defendant, in the said declaration mentioned, and of all the damages and sums of money thereupon due and owing, or accrued, which said two pieces of broad cloth, the said plaintiff then and there took, accepted, and received of and from the said defendant, as for and in full satisfaction and discharge of the said several promises and undertakings of the said defendant in the said declaration mentioned, and of the whole damages and sums of money before mentioned; and this he the said defendant is ready to verify; wherefore he prays judgment, if the said plaintiff ought to have or maintain his afore said action thereof against him, &c. And the said plaintiff saith, that he, by any thing by the said defendant in his said plea above alledged, ought not to be barred from having and maintaining his afore said action thereof against the said defendant; because, protesting that the said defendant did not deliver to him the said plaintiff the said two pieces of broad cloth in the said plea mentioned, or any part thereof, in full satisfaction and discharge of the said promises and undertakings of the said defendant in the said declaration mentioned, and of all the damages and sums of money thereupon due and owing or accrued in manner and form as the said defendant hath above in his said plea in that behalf alledged: nevertheless, for replication in this behalf, the said plaintiff saith, that he the said plaintiff did not accept or receive the said two pieces of broad cloth in the said plea mentioned, or any part thereof, of or from the said defendant, in full satisfaction or discharge of the said several promises and undertakings of the said defendant in the said declaration mentioned, and of the whole damages and sums of money before mentioned, in manner and form as the said defendant hath above in and by his said plea in that behalf alledged; and this he the said plaintiff prays may be enquired of by the country, and the said defendant doth the like, &c.; therefore, &c.

* That this is the best mode of pleading, and not by way of accord, see 9. Co. 806. 1. Ld. Raym. 60. 566.

On demurring to a plea for omitting these words, and only saying that plaintiff accepted in satisfaction, &c. they were held not to be absolutely necessary, see Gill. Ca. 234; but the bare shewing that defendant gave the thing in satisfac-

tion, without alledging that plaintiff received and accepted it as such, would be insufficient. See 1. Stra. 573. 23. To an action upon a bond without any condition, satisfaction must be pleaded to be by defendant, perhaps where there appears to be a condition for the payment of money. See 2. Will. 86, 87. 6. Rep. 43. Cro. Jac. 254.

AND the said defendant, by his attorney, comes and defends the wrong and injury, when, &c. and saith, that the said plaintiff (*actio non*); because he saith, that he the said defendant, after the making of the said promises and undertakings in the said declaration mentioned, and before the exhibiting, &c. to wit, on, &c. at, &c. made and sealed, and as his act and deed delivered unto the said plaintiff a certain writing-obligatory for the payment of &c. of lawful, &c. and interest for the same, at a certain day then to come; and which said writing-obligatory the said defendant then and there delivered to the said plaintiff, in full satisfaction and discharge of the said several promises and undertakings in the said declaration mentioned; and which said writing-obligatory the said plaintiff then and there accepted and received of and from the said defendant, in full satisfaction, payment, and discharge of the said several promises, &c.; and this, &c. wherefore, &c. if, &c.

Plea that bond was delivered in satisfaction.

AND the said John, by James G. his attorney, comes and defends the wrong and injury, when, &c. and saith, that the said Isaac ought not to have his said action for the same against him; because he says, that after the making of the said several promises and undertakings aforesaid mentioned in the said declaration of the said Isaac, before the day of issuing out of the original writ of the said Isaac, to wit, on the first day of January 1779, he the said John gave and delivered to the said Isaac one mahogany beaureau and book-case, in full satisfaction and discharge of the several promises and undertakings mentioned in the said declaration, and of all the sums of money therein contained; which said mahogany beaureau and book-case, so given in full satisfaction and discharge as aforesaid, he the said Isaac then and there accepted, received, and took of the said John, in full satisfaction and discharge of the said several promises and undertakings mentioned in the said declaration, and of all the sums of money therein contained; and this he is ready to verify; wherefore he prays judgment if the said Isaac ought to have his said action against him, &c.

Plea that defendant accepted a mahogany bureau and book-case, which plaintiff accepted in satisfaction and discharge.

W. MANLEY.

And the said Isaac says, that by reason of any thing by the said John above in pleading alledged, he the said Isaac ought not to be barred from having or maintaining his said action thereof against the said John; because, protesting that the said John did not give and deliver to him the said Isaac one mahogany beaureau and book-case, in full satisfaction or discharge of the several promises and undertakings mentioned in the said declaration, as the said John hath above in pleading alledged: Yet, for replication in this behalf, the said Isaac saith, that the said Isaac *did not accept, receive, and take* of and from the said John the said mahogany beaureau and book-case, in full satisfaction and discharge of the said several promises and undertakings mentioned in the said declaration,

Replication that plaintiff did not accept, &c. in satisfaction.

ration, in manner and form as the said John hath above in pleading alledged; and this he the said Isaac prays may be enquired of by the country, and the said John doth the like, &c.; therefore let a jury come before our said lord the king at Westminster, on next after , by whom, &c. and who neither, &c.; to recognize, &c.; because, as well, &c; the same day is given to the said parties there, &c.

Plea of an agreement, that defendant should pay plaintiff's creditor a debt due to him from plaintiff, and that it should be deemed a satisfaction from defendant pleaded.

TINDALL } *FIRST, Non assumpsit.* 2d, And for further plea,
against } &c. said defendant by leave, &c. saith, that said
READ. } plaintiff (*actio non*); because he saith, that long before the making of the several promises and undertakings in the said declaration mentioned, the said plaintiff was retained and employed in the way of his art or business of a builder by said defendant, to erect and build certain erections, edifices, and buildings of and for the said defendant, to wit, at Westminster aforesaid; and being so retained and employed as aforesaid, he the said plaintiff afterwards, and before the making the several promises and undertakings in the said declaration mentioned, and long before the suing forth, &c. against the said defendant, appointed, commissioned, and deputed one James Pingney, who was then, and yet is, a builder, to superintend, direct, do, and perform, as well the said business of the said defendant, as divers other affairs and business for him the said plaintiff, to wit, at Westminster aforesaid: And the said defendant further saith, that the said J. P. being so appointed, &c. aforesaid, in manner and for the purposes aforesaid, he the said J. P. did accordingly afterwards, and before the making of the agreement hereafter mentioned, and also before the suing forth, &c. superintend and erect the erecting and building and erections and buildings, and the repairing and amending the said other edifices and buildings of the said defendant, of and for him the said plaintiff, to wit, at, &c. aforesaid; and thereupon afterwards, and after the making of the said several promises and undertakings in the said declaration mentioned, and before the suing forth, &c. to wit, on the first day of January, A. D. 1776, at Westminster aforesaid, a certain discourse was had and moved by and between the said plaintiff and the said defendant, of and concerning the premises, and also of and concerning the means by which the said plaintiff should be satisfied by the said defendant for his labour, care, diligence, and expences in and about the said premises; and upon that discourse it was then and there, to wit, on the day and year last aforesaid, at, &c. aforesaid, agreed by and between the said plaintiff and the said defendant, that the said defendant should pay or cause to be paid to the said J. P. the sum of five hundred pounds, of lawful, &c. as and for a payment for and in behalf, and of and from him the said plaintiff to the said J. P. for money due and owing from the said plaintiff to the said J. P. and that on payment thereof he the said defendant should be wholly released, exonerated, and discharged of and from the said several promises

promises and undertakings in the said declaration mentioned, and also of and from all damages and sums of money thereupon due, owing, and accrued: And the said defendant further saith, that he, confiding in the said agreement, so made between her the said plaintiff and the said defendant; and the said plaintiff in manner as aforesaid, did afterwards, to wit, on the third day of February in the year last aforesaid, at, &c. aforesaid, in pursuance of the said agreement, and by and with the knowledge, privity, and consent of the said plaintiff, pay unto the said J. Pingney the said sum of five hundred pounds in the said agreement mentioned, and which said sum of five hundred pounds he the said J. Pingney then and there took, accepted, and received of and from him the said defendant, as and for payment for and on behalf, and of and from the said plaintiff to him the said J. P. to wit, at Westminster aforesaid; by reason whereof, and according to the tenor and effect and by virtue of the said agreement, he the said defendant became, and then and there was wholly released, exonerated, and discharged of and from the said several promises and undertakings in the said declaration mentioned, and also of and from all damages or sums of money thereupon due, owing, or accrued, to wit, at Westminster aforesaid; and this, &c. wherefore, &c. if, &c. 3d Plea, a set off for five hundred pounds paid, lent, had, and received, &c.

J. MINGAY,

FIRST General Issue. And for further plea in this behalf, the said Samuel, by leave of, &c. says [*actio non*]; because he says, that the said Samuel, at the time of the making of the said several promises and undertakings in the said declaration mentioned, was under the age of twenty-one years, to wit, of the age of twenty years and no more, to wit, at, &c. in, &c.; and this, &c.; wherefore, &c.; and for further plea in this behalf, the said Samuel, by like leave, &c. says [*actio non*]: because he the said Samuel says, that he the said Samuel, after the making of the said several supposed promises and undertakings in the said declaration mentioned, to wit, on, &c. at, &c. was indebted to the said Edward in the sum of sixty-two pounds of, &c. upon or by virtue of the said several supposed promises and undertakings in the said declaration mentioned, and no more, and also to one A. B. in the sum of two hundred and thirty-eight pounds of, &c. making together the sum of three hundred pounds; and he the said being so indebted to the said Edward and A. B. afterwards, to wit, on, &c. at, &c. at the special instance and request of the said Edward and A. B. signed and sealed, and as his act and deed signed and delivered a certain deed or instrument called a warrant of attorney, to confess judgment, bearing date the day and year last aforesaid, directed to certain persons therein named, as being attornies of his majesty's court of king's bench at Westminster respectively, or to any other attorney of the same court, and thereby impowered them, or any or either of them, or any other

Plea. 1st, *Non assumpsit*. 2d, infamy. 3d, that the defendant was indebted to the plaintiff in 62l. and no more, and to one A. B. in 238l. and that at their joint request he gave them a warrant of attorney to confess a judgment, which the plaintiff received in full satisfaction of his debt, and afterwards entered up judgment thereon.

PLEAS IN ASSUMPSIT.

other attorney as aforesaid, to appear for him the said Samuel, in his said majesty's court of king's bench at Westminster, as of Hilary term then last past, or any other subsequent term, and to receive a declaration against him the said Samuel, at the suit of the said Edward and A. B. in a plea of debt, for the sum of three hundred pounds (of which sum of three hundred pounds the sum of sixty-two pounds so due and owing from the said Samuel to the said Edward, was part and parcel) and to suffer judgment to go against him in such suit for the said sum of three hundred pounds by default or otherwise, and then and there, at the said instance and request of them the said Edward and A. B. then and there delivered the said deed or instrument, so executed by him the said S. as aforesaid, in full satisfaction and discharge of the said sum of money so then due and owing to them the said Edward and A. B. respectively as aforesaid, and which said deed or instrument called a warrant of attorney, to confess judgment, they the said Edward and A. B. then and there accepted, had, and received of and from the said Samuel, in full satisfaction and discharge of the said several sums of money so due and owing from the said S. to the said Edward and A. B. respectively as aforesaid: And the said S. further says, that the said deed or instrument called a warrant of attorney to confess judgment, so being executed, delivered, and accepted in manner and on the occasion aforesaid, they the said Edward and A. B. afterwards, to wit, on, &c. at, &c. caused the said judgment to be entered up of record in the said court of king's bench at Westminster against the said Samuel, as of the term of St. Hilary aforesaid, in the twenty-sixth year of the reign of our said lord the king, for the said sum of three hundred pounds so due and owing to the said Edward and A. B. respectively as aforesaid (of which said sum of three hundred pounds the said sum of sixty-two pounds so due and owing from the said S. to the said Edward, was part and parcel), as also for sixty-three shillings which were awarded to the said Edward and A. B. in and by the said court of king's bench, for their damages by them sustained, as well on occasion of the detention of that debt as for their costs and charges by them about their suit in that behalf expended, as by the record and proceedings thereof still remaining in the said court of our said lord the king, before the king himself at Westminster, more fully appears: And the said Samuel further says, that the said judgment still remains in the said court of our said lord the now king, before the king himself, in full force, strength, and effect, not set aside, reversed, or any way annulled or made void: And the said Samuel avers, that no more money was due and owing from the said Samuel to the said Edward, upon or by virtue of the said several promises and undertakings in the said declaration mentioned, than the said sum of sixty-two pounds, to wit, at, &c.; and this, &c.: wherefore, &c. (Set off for meat, drink, board, washing, and lodging.)

AND

ACCOUNT STATED.

CRANE } AND the said William, by Robert Lawless, his
at the suit of } attorney, comes and defends the wrong and injury,
WALKER. } when, &c. and saith, that the said Benjamin ought
not to have or maintain his aforesaid action against him, because
he says, that after the making of the said several promises and un-
dertakings in the said declaration mentioned, and before the day
of exhibiting the bill of the said Benjamin in the suit, to wit, the
second day of November in the said year of Our Lord 1790,
at Westminster aforesaid, a certain account was had and stated by
and between the said Benjamin and the said William, of and con-
cerning the said several sums of money in the said declaration men-
tioned; and upon that account the said William was then and there
found to be in arrear and indebted to the said Benjamin in the sum
of nineteen pounds ten shillings and sevenpence of lawful money
of Great Britain, and no more; for which said sum of nineteen
pounds ten shillings and sevenpence he the said William then and
there made and delivered to the said Benjamin his certain promiss-
ory note in writing, with his own hand thereunto subscribed,
bearing date the same day and year last aforesaid, whereby the
said William then and there promised to pay, six months after the
date thereof, to the said Benjamin or his order, the sum of thir-
teen pounds ten shillings and sevenpence for value received: And
the said William in fact saith, that the said Benjamin afterwards,
to wit, on the second day of November in the year last aforesaid,
at Westminster aforesaid, by his certain indorsement in writing on
the said last-mentioned note, ordered and applied the contents
thereof to be paid to one Peter Wiggins or his order, for value
received, and then and there delivered the said note so in-
dorsed, to the said Peter Wiggins; by reason whereof, and by
force of the statute in such case made and provided, the said Wil-
liam became liable to pay, and still is liable to pay, to the
said Peter Wiggins, the said sum of nineteen pounds ten shillings
and sevenpence, according to the tenor and effect of the said note,
to wit, at Westminster aforesaid; and this the said William is
ready to verify; wherefore he prays judgment if the said Benja-
min ought to have or maintain his aforesaid action thereof against
him, &c.

Plea to an action
against the ac-
ceptor of a bill
of exchange at
the suit of in-
dorsee, that
plaintiff and de-
fendant stated
accounts con-
cerning the
causes of ac-
tion men-
tioned in decla-
ration, and de-
fendant was
found in arrears,
and gave plain-
tiff a negotiable
promissory note
for the balance,
which plaintiff
indorsed away
before action
brought, where-
by defendant is
liable to the in-
dorsee.

And the said Benjamin, as to the said plea of the said William
by him above pleaded in bar, says, that he the said Benjamin, by
reason of any thing therein contained, ought not to be barred from
having and maintaining his aforesaid action thereof against the
said William, because, protesting that the said plea and the mat-
ters therein contained in manner and form as the same are above
pleaded and set forth, are not sufficient in law to bar the said Ben-
jamin from having and maintaining his said action against the
said

Replication
thereto.

ANOTHER ACTION DEPENDING.—PLEA.

said William; protesting also, that the said William was and is indebted to the said Benjamin in more money than nineteen pounds ten shillings and sevenpence in the said plea mentioned, upon the several causes of action in the said declaration mentioned, to wit, in the several sums of money in the said declaration mentioned; protesting also, that he the said Benjamin did not indorse the said note in the said plea mentioned, or order the contents thereof to be paid to the said Peter Wiggins in the said plea mentioned, for replication thereto, he the said Benjamin says, that the said William did make and deliver to the said Benjamin the said note in the said plea mentioned, in manner and form as the said William hath above in his said plea in that behalf alledged; and this he the said Benjamin prays may be enquired of by the country, &c.

ANOTHER ACTION PENDING.

Plea thereto.
Enter action
pending for the
same promises.

KENDRICK } AND the said Edward, in his own person,
against } comes and defends the wrong and injury,
PRICE, one, &c. } when, &c. and says, that he ought not to be
compelled to answer the declaration in this behalf, because he says,
that the bill of the said Samuel by him above exhibited against the
said Edward in this behalf, was exhibited against him by the
said Samuel in the court of our lord the king of the bench here
in this same Hilary term, and not before, to wit, at Westminster
aforesaid, in the said county of Middlesex, and that heretofore, to
wit, in Michaelmas term last past, in the twenty-eighth year of
the reign of our lord the now king, the said Samuel impleaded
the said Edward in the court of our lord the king before the king
himself, then and still being held at Westminster in the said coun-
ty of Middlesex, and then in the said court of our said lord the
king, before the king himself, exhibited his certain other bill
against the said Edward, in a plea of trespass upon the case, of and
upon the non-performance of the very same identical promises and
undertakings in the said bill and declaration of the said Samuel in
this present suit mentioned, then and there, by his said bill so by
him exhibited in the said court of our said lord the king before
the king himself, against the said Edward, complaining that
whereas [here set out the whole of the declaration, which in this
case was on a promissary note]; and therefore he prayed relief, &c.
as by the record and proceedings thereof still remaining in the
said court of our said lord the king, before the king himself, more
fully appears: And the said Edward further says, that the said Sa-
muel, the plaintiff in the said former suit, and the said Samuel
in the present suit, is one and the same person and not divers or
dif-

different persons; and the said Edward, the defendant in the said former suit, and the said Edward, the defendant in this present suit, is one and the same person, and not divers or different persons; and that the several causes of action mentioned and contained in the said bill in the said former suit, and the said several causes of action mentioned and contained in the said bill and declaration in this present suit, are the very same identical causes of action, and not divers, different, or other causes of action, and that the said former suit so by the said Samuel brought and prosecuted against him the said Edward in the said court of our said lord the king, before the king himself, as aforesaid, was, at the time of the exhibiting of the bill of the said Samuel in this present suit, and still is depending in the said court of our said lord the king, before the king himself, not discontinued, tried, or determined; and this, &c.; wherefore, &c. if he ought to be compelled to answer to the declaration of the said Samuel in this present suit, &c.

GEO. HILL.

And the said Samuel says, that by reason of any thing by the said Edward above in pleading alledged, he the said Edward to the said declaration of the said Samuel, ought not to be compelled to answer, because he says, that true it is that the said Samuel did, in Michaelmas term, in the twenty-eighth year of, &c. implead the said Edward in the said court of our said lord the king, before the king himself, the said court then and still being at Westminster aforesaid in the said county of Middlesex, and then, in the said court of our said lord the king, before the king himself, exhibited his certain bill against the said Edward in a certain plea of trespass on the case, in manner and form as the said Edward hath in and by his said plea by him above pleaded alledged; but the said Edward further says, that afterwards, and long before the said Samuel exhibited his said bill in this suit, to wit, in Michaelmas term aforesaid, the said Samuel came into the said court of our said lord the king, before the king himself, the same court then and still being held at Westminster in the same county of Middlesex, and defended the wrong and injury, &c. and prayed judgment of the said bill so exhibited in the former suit, because that the said Edward was not, nor ever had been, one of the attornies of the court of our said lord the now king, before the king himself, as the said Samuel had in and by his said bill in the said plea mentioned alledged, which said allegation he the said Edward was ready to verify; wherefore he the said Edward prayed judgment of the said bill of the said Samuel, and that the same might be quashed: And the said Samuel further says, that he the said Samuel afterwards, and before the exhibiting of the said bill of the said Samuel in this present suit, to wit, in Michaelmas term aforesaid, freely in the said court of our said lord the king, before the king himself, the said court then and still being at Westminster aforesaid in the said county of Middlesex, acknowledged that he

Replication to
the last plea.

could

could not deny the said allegation to the said plea of the said Samuel, exhibited by him as aforesaid in the said court of our said lord the king, before the king himself, for the cause aforesaid, in and by the said plea of the said Edward by him thereto above made alledged, but admitted the same to be true; and thereupon it was considered, in and by the said court of our said lord the king before the king himself, that the said bill of the said Samuel by him against the said Edward exhibited in the court of our said lord the king, before the king himself, should be quashed, as by the record and proceedings thereof remaining in the said court of our said lord the king, before the king himself at Westminster aforesaid, more fully appears; without this, that the said former suit so by the said Samuel brought and prosecuted against him the said Edward in the said court of our said lord the king, before the king himself, was at the time of exhibiting of the bill of the said Samuel in this present suit depending in the said court of our said lord the king, before the king himself, not discontinued, tried, or determined; and this, &c. : wherefore, &c. ; and that the said Edward, to the aforesaid declaration of the said Samuel, may answer, &c.

T. C. KIRBY.

Rejoinder to last
replication, *mul*
ties record.

And the said Edward saith, that he, by reason of any thing by the said Samuel above in pleading alledged, ought not to be compelled to answer to the declaration aforesaid of the said Samuel, because he says, that there is not any such record of the aforesaid judgment remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, as the said Samuel hath above in his said plea so by him above pleaded, by way of reply in that behalf alledged; and of this he the said Samuel puts himself upon the judgment of the court here; and thereupon the said Samuel is commanded by the said court here that he produces the said record, if any such there be, before the justices of our said lord the king of the bench at Westminster, in fifteen days of Easter, and that he fail not at his peril; the same day is given to the said Edward there, &c.

GEORGE HILL.

Plea of prior ac-
tion depending
at the suit of
plaintiffs, bank-
rupts, before
they become
bankrupts.

FERON, } AND said defendant, by A. B. his attorney,
at the suit of } comes and defends the wrong and injury, when,
&c. } &c. and saith, that said plaintiff, (*adlio non*), be-
cause he saith, that after the making of the said promises and un-
dertakings in said declaration mentioned, and before said T. D.
and J. W. became bankrupts as aforesaid, to wit, on Monday
next after the morrow of All Souls in Michaelmas term, in the
twenty-first year of the reign of our lord the now king, before
our lord the now king at Westminster, came said T. D. and
J. W. by C. D. their attorney, and brought into the court of our
lord the king, before the king himself then there, their certain bill
against said defendant, being in the custody of, &c. in a plea of
trespass

trespass on the case on promises to said T. D. and J. W. their damage of pounds, of, &c. for the not performing of the same identical promises and undertakings in said declaration mentioned, and the said T. D. and J. W. then and there found pledges for the prosecution of their said bill, as by the record and proceedings thereof remaining in said court of our said lord the king, before the king himself now here (reference being thereto had) will more fully and at large appear: And said defendant in fact further saith, that said bill so prosecuted by said J. D. and T. W. as aforesaid, is still depending in said court of said lord the king, before the king himself now here, in no wise abated, discontinued, tried, or determined, but the same is still wholly undetermined; and this, &c.; wherefore, &c. if, &c.

V. LAWES.

GRANT

at the suit of

WATSON AND ANOTHER.

NON ASSUMPSIT. And for

} further plea in this behalf, the said defendant, by leave, &c. saith, that the said plaintiff *actio non*, because he saith, that on next after in Term, in the year of the reign of his present majesty king George the Third, before the said lord the king himself, at Westminster, in the said county of Middlesex, came the same plaintiffs by their attorney, and brought into the said court of our said lord the king then there his certain bill against the said defendant, being in the custody, &c. of a plea of, &c.; and there were pledges for the prosecution thereof, to wit, J. D. and R. R.; by which said bill the said plaintiffs complained against the said defendant, being in the custody of, &c.: for that whereas, &c. (recite the declaration in the original action, and omit the pledges): and afterwards, to wit, in that same term of in the year aforesaid, the said defendant, by her attorney, comes into the court of our said lord the king, before the king himself, at Westminster, and defended the wrong and injury when, &c. and said, that, &c. (recite the plea); and the said plaintiff did the like, &c.; which said issue so joined as aforesaid, afterwards, to wit, on the day of in the year aforesaid, at Westminster aforesaid, in the county of Middlesex aforesaid, came on to be tried, and was tried, by a jury of the said county of Middlesex, before the right honourable William earl of Mansfield, his majesty's chief justice assigned to hold pleas before the king himself; and the jurors of the said jury being summoned, came to declare the truth of the matter within contained, and being chosen, tried, and sworn, said, that the said defendant did not undertake and promise in manner as the said plaintiff hath so complained against her the said defendant: Therefore afterwards, to wit, in Michaelmas Term, in the year of the reign of our said lord the now king, before the king himself, it was considered, that the said plaintiffs should take nothing by their bill aforesaid, but that they and their pledges to prosecute should be amerced for their false claim therein, and that the said defendant should

Plea, that obtained a verdict and judgment against the plaintiff in a prior action brought by the plaintiff against defendant for the same cause of action.

ARBITRAMENT.—PLEA.

should go thereof without delay : and it was further considered by the said court of our said lord the king here, that the said defendant should recover against the said plaintiffs pounds for her costs and charges by her about her defence in that behalf expended by the said defendant, by the said court of our said lord the now king here, according to the form of the statute in such case made and provided, by her assent adjudged, &c. as by the record and proceedings thereof, now remaining in the said court of our said lord the now king, before the king himself here, to wit, at Westminster aforesaid, may more fully appear ; which said judgment is still in full force, vigour, and effect, not in the least reversed, vacated, annulled, or made void : And the said defendant further saith, that the promises and undertakings in the bill and record aforesaid in the said former suit, and the said promises and undertakings in the said declaration in the now present suit, are the same causes of action, and not other or different causes of action ; but the said causes of action in the said present declaration in the present suit are set out with some small immaterial variances from the said bill in the said former suit, that the same in fact may seem to be different causes of action ; and that the said plaintiffs in the said former suit and the said the now plaintiffs, are one and the same persons, and not other or different persons, and the said defendant, the defendant in the former action, and the said defendant, the now defendant, are one and the same person, and not other or different persons ; and this the said defendant is ready to verify : wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him, &c.

J. WARREN.

ARBITRAMENT.

Plea of submission to arbitration, and an award shewn, &c.

AND the said Earl comes and defends the wrong and injury when, &c. and says (*actio non*) ; because he saith, that after the making of the said several promises and undertakings, and before the commencement of this suit, to wit, on, &c. at, &c. divers variances and controversies had been had and moved, and were then depending, by and between the said John and the said Earl, for the settling and adjusting of which said several variances they the said John and Earl, by two several writings obligatory, bearing date the same day and year, became reciprocally bound to each other in the penal sum of pounds to be paid to each other, with conditions to the said bond annexed to make void the same if the said John and Earl, their respective heirs and assigns, did, &c. as by the said several respective bonds and conditions, relation being thereunto respectively had, will more fully and at large appear : And the said Earl in fact says, that the said arbitrators above-named having taken upon themselves the burthen of the arbitration aforesaid betwixt the said John and the said Earl, and having deliberately considered what had been
alleged

alleged and offered by each of the said parties, afterwards, and within the said time above limited for the making of their said award, to wit, on, &c. at, &c. made their award in writing of and concerning the promises so referred, &c. as aforesaid, under their hands, in writing, ready to be delivered to the said parties; by which said award, after making all allowances to the said John, they the said arbitrators found the said John to be in arrear to the said Earl in sixty pounds: And therefore the said arbitrators by their said award awarded and ordered the said John to pay to the said Earl or his order the said sixty pounds in ten days after the date of the said award, which has not yet been paid; and this, &c.: wherefore, &c.

SAM. COX.

Precludi non; because protesting as to the sufficiency of the plea; protesting also, that they the said John and Earl did not become necessarily bound to each other by such writing obligatory in manner and form as the said Earl hath above in his said plea alleged; protesting also, that the said arbitrators above-named did not take upon themselves the burthen of the said arbitration betwixt the said John and the said Earl in manner and form as, &c.: Nevertheless, for replication in this behalf the said John says, that the said arbitrators did not make any such award of and concerning the premises as the said Earl hath, in and by his said plea in that behalf, alleged; and this he prays, &c.

Replication,
quod nullum fecerunt arbitrationem.

JUDGMENT RECOVERED.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said plaintiff, *actio non*; because he saith, that the said plaintiff heretofore, to wit, in term, in the year of the reign of his present majesty, impleaded him the said defendant in his majesty's court, before Alexander Lord Loughborough and his brethren, then his majesty's justices of the bench at Westminster, in a certain plea of trespass on the case on promises to the said plaintiff's damage of pounds, of and for the not performing of the very same identical promises and undertakings in the said declaration mentioned, and such proceedings were thereupon had in the said court of our said lord the king of the bench, in that plea that the said plaintiff afterwards, to wit, in the very same term, in the year aforesaid, by the consideration and judgment of that court, recovered in the said plea against the said defendant pounds, which in and by the said court of our said lord the king of the bench in that plea were adjudged to him the said plaintiff for his damages which he had sustained, as well on occasion of the not performing of those very same identical promises.

Judgment recovered in C. P. pleaded to an action in B. R.

JUDGMENT RECOVERED.--REPLICATION.--PLEA.

promises and undertakings in the said declaration mentioned, as for his costs and charges by him laid out about his suit in that behalf, whereof the said defendant was convicted, as by the record and proceedings thereof still remaining in the court of our lord the king of the bench at Westminster aforesaid, reference being thereunto had, more fully and at large appears; which said judgment still remains in its full force, strength, and effect, not in the least reversed or made void; and this he the said defendant is ready to verify by the said record, wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

Replication, *nul tiel* record to the above plea of judgment recovered.

And the said plaintiff saith, that he by any thing by the said defendant in his said plea alledged, ought not to be barred from having his aforesaid action thereof against the said defendant; because he says that there is not any such record of the recovery aforesaid in the said plea of the said defendant mentioned remaining of record in the said court of our lord the king, *(a) before the king himself, (or of the bench at Westminster)* as the said defendant hath in and by his said plea in that behalf above alledged; and this he the said defendant is ready to verify, when, where, and in what manner this court shall order, direct, or appoint; and thereupon the said defendant is commanded that he have the said record here on _____, and that he fail not on his peril; the same day is given to the said plaintiff here, &c.

(a) This form of replication, with the alterations in *italic*, will do for judgment recovered in either court.

That this replication may conclude with a verification when the record is stated to be of another court, vide 2. Will. 173. 114.

Replication to a plea of *nul tiel* record in K. B. record in the same court.

AFTER the usual answer to the fact of the plea, by affirming the existence of the record, go on as follows: And this he is ready to verify by the said record: and thereupon he prays, that the said record, which is on a roll of this next term, in the twenty-second year aforesaid, and numbered, may be seen and inspected by the said court here: and because it is necessary and convenient that the said record, if any such there be, be inspected by the said court here before judgment is given in the premises a day, that is to say, next after _____ is given to the said parties to be before our lord the king at Westminster to hear judgment thereon.

Vide, in addition to the authorities in 278. 2. Lut. 1514. and the authorities Carth. 517. Rob. Entr. 204. where therein cited. there is also the judgment, Herne's Plead.

Plea to *assumpsit* in B. R. judgment recovered in C. B. in same cause of same term with declaration.

AND now at this day, that is to say, on Friday next after the morrow of All Souls in this same term, until which day the said

John

John had leave to imparl to the said bill, and then to answer the same, &c. as well the said Philip, by his said attorney, as the said John, by Smith Nathaniel Blgrave and William Bedcott Latley, his attornies, do come before our lord the king at Westminster; and the said John defends the wrong and injury, when, &c. and saith, that the said Philip Cawston ought not to have or maintain his said action thereof against him; because he says, that after the making of the several promises and undertakings in the said declaration mentioned, that is to say, in the term of the Holy Trinity now last past, the said Philip, in the said court of our lord the king of common bench, at Westminster, in the county of Middlesex, impleaded the said John in a certain plea of trespass on the case upon the same identical promises and undertakings in the said declaration mentioned, and such proceedings were had thereon, that the said Philip afterwards, to wit, in the same term of the Holy Trinity, by the consideration and judgment of the said court, recovered against the said John the sum of one hundred pounds, as well for his damages occasioned by the non-performance of the same identical promises and undertakings in the said declaration mentioned, as for his costs and charges which he had been put unto in and about that suit in that behalf, whereof the said John was convicted, as by the record and proceedings thereof, now remaining of record in the said court of our said lord the now king of common bench, at Westminster aforesaid, more fully appears; which said judgment now remains in full force and effect, and is in no wise reversed or made void; and this he is ready to verify by the said record: wherefore he prays judgment if the said John ought to have or maintain his aforesaid action thereof against him, &c.

V. LAWES.

And the said Philip saith, that by reason of any thing by the said John above in pleading alledged, he the said Philip ought not to be barred from having his said action thereof maintained against the said John, because he the said Philip saith, that there is not any such record of the judgment aforesaid recovered by him the said Philip against the said John remaining in the court of the lord the king of the bench at Westminster aforesaid, as the said John hath above in pleading alledged; and this he the said Philip is ready to verify: wherefore he prays judgment, and his damages by reason of the premises to be adjudged to him, &c.

Replication, nul
till record.

And the said John says, that there is such a record of the judgment aforesaid recovered by the said Philip against him the said John remaining in the court of the lord the king of the bench at Westminster, as he the said John hath above in pleading alledged; and this he the said John is ready to verify by the said record: and thereupon a day is given to the said John by the court of our said lord the king now here, that he may produce the said record before

Rejoinder.

JUDGMENT RECOVERED.

our lord the king at Westminster on next after at
his peril : the same day is given to the said parties to be there to
hear the judgment of the court.

Judgment reco-
vered in C. B. to
a ction in B. R.

AND the said Mary, by John W. her attorney, comes and de-
fends the wrong and injury, when, &c. and says, that the said
James ought not to have or maintain his aforesaid action against
her, because she says, that the said James heretofore, that is to
say, in Trinity Term, in the twenty-first year of the reign of our
lord the now king, impleaded the said Mary in the court of our
said lord the king of the bench, at Westminster, in the county of
Middlesex aforesaid, before Alexander lord Loughborough and his
brethren, then his majesty's justices of the bench aforesaid, in a
certain plea of trespass upon the case upon promises, for the non-
performance of the identical promises and undertakings in the said
declaration above specified, and such proceedings were thereupon
had in that plea in the same court of our said lord the king of the
bench aforesaid, that afterwards, that is to say, in the same Trinity
Term, the said James recovered against the said Mary forty pounds,
for the damages which he had sustained, as well by reason of the
non-performing the said promises and undertakings so made by the
said Mary as for his costs and charges by him about his suit in that
behalf expended, whereof the said Mary was convicted, as by the
record and proceedings thereof, remaining in the said court of our
said lord the king of the bench aforesaid, at Westminster aforesaid,
more fully appears ; which said judgment still remains in full force
and effect, not reversed or annulled ; and this she is ready to
verify by the said record : wherefore she prays judgment if the said
James ought to have or maintain his aforesaid action thereof against
her, &c.

W. BALDWIN.

Plea of judgment
recovered.

AND the said William Conniers, in his own proper person,
comes and defends the wrong and injury, when, &c. and says,
that the said William Brown ought not to have or maintain his
aforesaid action thereof against him, because he saith, that the said
William Brown heretofore, that is to say, in Easter Term row last
past, impleaded the said William Conniers in the court of our lord
the king, before the king himself, at Westminster, in the county of
Middlesex, in a certain plea of trespass on the case on promises, to
the said William Brown his damages of twenty pounds, for the not
performing the very same identical promises and undertakings in
the said declaration mentioned ; and such proceedings were there-
upon had in the said court of our lord the king, before the king
himself, in that plea, that the said William Brown afterwards, to
wits

wit, in that very same Easter Term now last past, by the consideration and judgment of that court, recovered against the said William Conniers twenty pounds, which in and by the said court of our lord the king in that plea were adjudged to him the said William Brown for his damages which he had sustained, as well on occasion of the non-performing of those very same identical promises and undertakings mentioned in the said declaration, as for his costs and charges by him laid out about his suit in that behalf, whereof the said William Conniers was convicted, as by the record and proceedings thereof, still remaining in the court of our lord the king at Westminster aforesaid, reference being thereunto had, may more fully and at large appear, which said judgment still remains in full force, strength, and effect, not in the least reversed or made void; and this he is ready to verify by the said record: wherefore he prays judgment if the said William Brown ought to have or maintain his aforesaid action thereof against him, &c.

J. C. BOLTON.

And the said William Brown saith, that he, by reason of anything by the said William Conniers in his said plea above alledged, ought not to be barred from having his said action maintained against the said Williams Conniers, because he saith, that there is no such record of the said judgment remaining in the said court of our said lord the king, before the king himself, as the said William Conniers hath in his pleading above alledged; and this he is ready to verify, when, how, and in what manner, the court shall order, &c.: and thereupon the said William Conniers is directed, that he have the record here on Wednesday next after three weeks from the day of the Holy Trinity at his peril, &c.; the same day is given to the said parties here, &c.

Replication, *mul-
tuel record.*

AND now at this day, that is to say, on Friday next after the morrow of the Holy Trinity in this same term, until which day the said David had leave to imparl to the said bill, and then to answer the same, &c. as well the said Richard, by his said attorney, as the said David, by Benjamin Lloyd his attorney, do come before our lord the king at Westminster; and the said David defends the wrong and injury when, &c. and says, that the said Richard ought not to have or maintain his aforesaid action thereof against him, because he says, that the said Richard heretofore, to wit, in Hilary Term last past, impleaded the said David in the court of our lord the now king of the bench, at Westminster, before Sir William de Grey, knight, and his brethren, justices of our said lord the king at the court of the bench aforesaid, in a certain plea of trespass on the case upon promises, to the said Richard his damage of twenty pounds, of and for the not performing of the same identical promises and undertakings in the said declaration mentioned; and such

Impar lance.
Plea of judg-
ment recovered.

REPLICATION.—REJOINDER.

proceedings were thereupon had in the said court of our said lord the king of the bench aforesaid, at Westminster aforesaid, in that plea, that he the said Richard afterwards, that is to say, in that same Hilary Term, by the consideration and judgment of that court, recovered against the said David in that plea twenty pounds for his damages which he had sustained, as well by occasion of the not performing of the said several identical promises and undertakings as for his costs and charges by him about his suit in that behalf expended, whereof the said David was convicted, as by the record and proceedings thereof, still remaining in the said court of our lord the king of the bench aforesaid, at Westminster aforesaid, more fully appears; which said judgment still remains in its full force, strength, and effect, not in the least reversed, made void, satisfied, or annulled; and this the said David is ready to verify by the said record: wherefore he prays judgment if the said Richard ought to have or maintain his aforesaid action thereof against him, &c.

G. MINGAY.

Replication, *mul*
tiel record.

And the said Richard says, that by reason of anything by the said David above in pleading alledged, he the said Richard ought not to be barred from having his said action thereof maintained against the said David, because he the said Richard says, that there is not any such record of judgment aforesaid recovered by him the said Richard against the said David remaining in the court of the lord the king of the bench, at Westminster aforesaid, as the said David hath above in pleading alledged; and this he the said Richard is ready to verify: wherefore he prays judgment, and his damages by reason of the premises to be adjudged to him, &c.

Rejoinder.

And the said David saith, that there is such a record of judgment aforesaid recovered by the said Richard against him the said David remaining in the court of the lord the king of the bench at Westminster aforesaid, as he the said David hath above in pleading alledged; and this he the said David is ready to verify by the said record: and thereupon a day is given to the said David, by the court of our said lord the king now here, that he may produce the said record before our lord the king at Westminster, on next after at his peril: the same day is given to the said parties to be there to hear the judgment of the court.

Plea to a declaration on a judgment recovered.

FIRST, General issue; *non assumpsit* to the whole declaration.
2d, As to promises and undertakings in the said first eight Counts, defendants plead a judgment recovered in Easter Term, the twenty-fifth of George the Third, against defendants, as survivors of A. B. 3d, As to all the promises in the declaration, a set off of monies due to the defendants.

And

And the said plaintiff as to the said plea of the said defendants by them secondly above pleaded in bar as to all the promises and undertakings in the said first eight Counts of the said declaration mentioned, says, *precludi non*, because he says, that although true it is that he the said plaintiff, in the term of St. Hilary, in the twenty-fifth year of, &c. did implead the said defendants, as such survivors as aforesaid, in the said court of our said lord the king of his exchequer, before the barons of the said court, in a certain plea of trespass on the case upon promises, for the not performing certain promises and undertakings; and that such proceedings were thereupon had in that plea, in the same court of our said lord the king of his exchequer aforesaid, that afterwards, to wit, in the term of Easter, in the said twenty-fifth year of, &c. he the said plaintiff recovered against the said defendants, by the judgment and consideration of the same court, five hundred and two pounds, in and by the said court adjudged to him for his damages which he had sustained as well by reason of the not performing the said promises and undertakings as for his costs and charges by him about his suit in that behalf expended; whereof the said defendants were convicted, as by the record and proceedings thereof, remaining in the said court of our said lord the king of his exchequer, at Westminster aforesaid, more fully appears, and that the said judgment still remains in full force and effect, not reversed, annulled, defeated, or avoided: Yet for replication in this behalf the said plaintiff says, that the said several promises and undertakings for which the said plaintiff impleaded the defendants, and recovered damages, as in the said record mentioned, were not, nor was, nor are, nor is, any or either of them, the same identical promises and undertakings as in the said eight Counts of the said declaration of the said plaintiff above are mentioned, but are other and different promises and undertakings than in the said first eight Counts of the said declaration mentioned; and whereof the said plaintiff has now impleaded the said defendants in that behalf, and above in his said declaration in that behalf complained against them: For that the said plaintiff has now impleaded them: for that whereas in the lifetime of the said A. B. that is to say, on, &c. at, &c. they the said A. B. and defendants were indebted to the said plaintiff in the sum of one thousand pounds, other and different than the sum in the said record mentioned, of lawful money of Great Britain, for other and different work and labour, care, skill, diligence, journies, and attendances, than in the said record is mentioned, of the said Richard before that time done, performed, and bestowed, by the said Richard, as an attorney and solicitor for the said A. B. and defendants, in and about the prosecuting, soliciting, and defending, divers causes, suits, and other businesses, for the said A. B. and defendants, on their retainer, and at their like special instance and request, and for other and different money paid, laid out, and expended, than the money in the said record mentioned, by the said Richard, at the like special instance and request of the said A. B. and defendants,

Replication, (a) new assignment, admitting the judgment; but that this action was brought for a different cause.

(a) For plea to new assignment, see *Set off*, post 163.

REPLICATION.—NEW ASSIGNMENT.

in and about the prosecuting, soliciting, and defending of the causes, suits, and businesses last-mentioned, and for the fees of the said plaintiff due and of right payable to him the said plaintiff in and about the premises; and that being thereupon indebted as last aforesaid, they the said A. B. and defendants, in the lifetime of the said A. B. in consideration thereof, afterwards, to wit, on, &c. at, &c. took upon themselves, and then and there faithfully promised the said Richard, that they the said A. B. and defendants would well and truly pay to the said plaintiff the said last-mentioned sum of one thousand pounds, when they the said defendants and A. B. should be thereunto afterwards requested: And that whereas afterwards, and in the lifetime of the said A. B. that is to say, on, &c. at, &c. in consideration that the said plaintiff had before that time done, performed, bestowed, and taken, other and different work and labour, care, skill, diligence, journies, and attendances, than in the said record mentioned, as an attorney and solicitor for the said A. B. and defendants, on their retainer, and at their like special instance and request, in and about the prosecuting, defending, and soliciting, divers other causes, suits, and other businesses, for the said A. B. and defendants: and that he the said plaintiff had also paid, laid out, and expended, divers other sums of money, other and different than in the said record is mentioned, in and about the prosecuting, defending, and soliciting, of the said last-mentioned causes, suits, and businesses, they the said A. B. and defendants took upon themselves, and then and there faithfully promised to the said plaintiff, that they would well and truly pay to the said plaintiff so much money as he reasonably deserved to have for the said last-mentioned work, &c. and also so much money as the said plaintiff had paid, laid out, and expended, in and about the prosecuting, soliciting, and defending, the said last-mentioned causes, suits, and businesses, and likewise as much money as was due and of right payable to the said plaintiff for his fees in the said last-mentioned respects, when they the said A. B. and defendants should be thereunto requested: And the said plaintiff in fact says, that he did reasonably deserve to have of the said A. B. and defendants, in the lifetime of the said A. B. for the work, &c. the further sum of eight hundred pounds of, &c.; and that he the said plaintiff paid, laid out, and expended, in and about the prosecuting, &c. the said last-mentioned causes, &c. the further sum of eight hundred pounds of, &c. and that there was and is due to him the said plaintiff, for his fees due and of right payable to him the said plaintiff in those last-mentioned respects, the further sum of eight hundred pounds, to wit, at, &c.; of which the said A. B. and defendants, in the lifetime of the said A. B. afterwards, to wit, on, &c. there had notice (so go on new assigning the first eight Counts in the said declaration, stating them to be for doing other business, and for other monies paid, &c. than those for which plaintiff recovered in the said former judgment, assigning the breach also to those eight Counts, as in the declaration): and which said last-mentioned premises and undertakings, so mentioned and set forth in the said first eight Counts

Counts of the said now declaration of the said plaintiff, and for the non-performance whereof he the said Richard has above in his said declaration complained against the said defendants, are other and different promises and undertakings than those for which the said plaintiff recovered damages, as, in the said record, and in the said plea of them the said defendants, by them secondly above pleaded in bar are mentioned; and this, &c.: wherefore, inasmuch as the said defendants have not answered the said complaint of the said plaintiff, as to the breach and non-performance of the said promises and undertakings in the said first eight Counts of the said declaration mentioned, and so newly above assigned, he the said Richard prays judgment, and his damages, by reason of the non-performance thereof, to be adjudged to him, &c. (Issue on plea of set-off.)

THO. WALKER,

OUTLAWRY.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and saith, that the said plaintiff (*actio non*); because he saith that one Daniel Edwards, heretofore, to wit, in the year of the reign of his present majesty, by an original writ impleaded the said plaintiff by the name of, &c. in his present majesty's court, before Sir William De Grey, knt. and his brethren, then his said Majesty's justices of the bench at Westminster, in the county of Middlesex, (or in the court of our lord the now king, before the king himself, the said court then and still being held at Westminster in the said county of Middlesex), in a plea of trespass; and the said plaintiff, because he did not appear in his said majesty's court of the bench, or in the said court of our said lord the king, before the king himself, to answer to the said D. E. in the plea aforesaid, according to the laws and customs of this realm, was put in exigent to be outlawed in London, and for that afterwards, to wit, on , in the twelfth year of the reign of his present majesty, in the said court of our said lord the now king of the bench, (or before the king himself) was outlawed in due form of law, at the suit of the said Daniel Edwards, in the aforesaid plea, and still remains outlawed, as by the record and proceeding thereof in his said majesty's court of the bench at Westminster aforesaid, (or in the said court of our said lord the king, before the king himself), returned and now remaining, more fully appears; and this he the said defendant is ready to verify by the record, wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him the said defendant.

J. MORGAN.

This plea, with the alterations in italics, will do for either Counts.

This disability may be taken advantage of by pleading it either in abatement of
in

OUTLAWRY.—PAYMENT.

in bar, with this difference, that it may be pleaded in abatement in all cases, but commonly be pleaded in bar where the ground or causes of action is forfeited, see

Morg. Dig. 53, &c.; that it may be pleaded in bar in *assumpsit*, see 2. Vent. 282, 3. Lut. 39. and other authorities, as in Morg. Dig. 53, 54.

Outlawry in C. P. to an action in K. B.

AND the said defendant, by A. B. his attorney, comes, &c. (*actio non*); because he says that one T. W. heretofore, to wit, in term, in the year of the reign of his present majesty, by an original writ, impleaded the said plaintiff by the name of, &c. in his present majesty's court, before Sir William De Grey, knight, and his brethren, then his said majesty's justices of the bench at Westminster, in the county of Middlesex, in a plea of trespass; and the said plaintiff, because he did not appear in his said majesty's court of the bench to answer unto the said T. W. in the plea aforesaid, according to the laws and customs of this realm, was put in exigent to be outlawed in London, and for that reason, afterwards, to wit, on next after, in the year of the reign of his present majesty, in the said court of our said lord the now king of the bench at Westminster, was outlawed in due form of law, at the suit of the said T. W. in the aforesaid plea, and still remains outlawed, as by the record and proceedings thereof in his said majesty's court of the bench, at Westminster aforesaid, returned, and now there remaining, more fully appears; and this, &c. by the said record; wherefore, &c. if, &c. J. MORGAN,

P A Y M E N T . *

Plea to declaration in *assumpsit* for work and labour as a builder, and repairing premises, that defendant did employ Plaintiff; but that plaintiff employed one A. B. as his deputy, to superintend the works; and that defendant, according to the directions of plaintiff, paid A. B. the money for the work.

TEASDALE } FIRST, *non assumpsit*. Second, And for further plea, &c. (*actio non*); because he says, that at suit of } long before the making of the several promises and undertakings in the said declaration mentioned the said plaintiff was retained and employed in the way of his art or business of a builder by the said defendant, to erect and build certain erections, edifices, and buildings, and to repair and amend certain other edifices and buildings, of and for him the said defendant, to wit, at, &c.; and being so retained and employed as aforesaid, he the said plaintiff afterwards, and before the making of the several promises and undertakings in the said declaration mentioned, and long before the suing forth, &c. against the said defendant, appointed, commissioned, and deputed one J. P. who was then, and yet is a builder, to superintend, direct, do, and perform, as well the said business of him the said defendant, as divers other affairs and business for him the said plaintiff, to wit, at, &c.: And the said defendant further says, that the said J. P. being so appointed, &c. as aforesaid, in manner and for the purposes aforesaid, he the said J. P. did accordingly, afterwards, and before the making of the several promises and undertakings in the said declaration, and before the time of making the agreement hereafter mentioned, and also before the suing forth, &c. superintend and direct the erecting and building of the said erections and buildings, and the re-

* See Set off, post 160.

pairing and amending the said other erections and buildings of the said defendant of and for him the said plaintiff, to wit, at, &c.; and thereupon, afterwards, and after the making of the several promises and undertakings in the said declaration mentioned, and before the suing forth, &c. to wit, on, &c. at, &c. a certain discourse was had and moved between the said defendant and the said plaintiff of and concerning the said premises, and also of and concerning the means by which the said plaintiff should be satisfied by the said defendant for his labour, care, diligence, and expences in and about the said premises; and upon that discourse it was then and there, to wit, on, &c. at, &c. agreed, by and between the said plaintiff and the said defendant, that the said defendant should pay, or cause to be paid, to the said J. P. the sum of five hundred pounds, of lawful, &c. as and for a payment for and in behalf of and from him the said plaintiff to the said J. P. for money due and owing from the said plaintiff to the said J. P. and that on payment thereof he the said defendant should be wholly released, exonerated, and discharged, of and from the several promises and undertakings in the said declaration mentioned, and also of and from all damages and sums of money thereupon due, owing, or accrued: And the said defendant in fact further says, that he, confiding in the said agreement so made between him the said defendant and the said plaintiff in manner as aforesaid, did afterwards, to wit, on, &c. at, &c. in pursuance of the said agreement, and by and with the knowledge, privity, and consent of the said plaintiff, pay unto the said J. P. the said sum of five hundred pounds in the said agreement mentioned, and which said sum of five hundred pounds the said J. P. then and there took, accepted, and received of and from him the said defendant, as and for payment for and on behalf of and from him the said plaintiff to him the said J. P. for money due and owing from the said plaintiff to the said J. P. to wit, at, &c.; by means whereof, and according to the tenor and effect, and by virtue of the said agreement, he the said defendant then and there became and was wholly released, exonerated, and discharged of and from the said several promises and undertakings in the said declaration mentioned; and also of and from all damages or sums of money thereupon due, owing, or accrued, to wit, at, &c.; and this, &c. wherefore, &c. if, &c.

F. BULLER.

PERFORMANCE.

NOTES, ESQ. } AND the said defendant, by A. B. his attorney, Plea of a per-
at suit of } comes and defends the wrong and injury, when, formance to the
FULWOOD. } &c. and saith, that he did not undertake or promise first Count as to
in manner and form as the said plaintiff hath above thereof com- repairs.
plained against him; and of this he puts himself upon the country,
&c.: And for further plea as to the first promise and undertaking
in

in the said declaration mentioned, the said defendant, by leave, &c. saith, that said defendant (*actio non*); because he saith, that the said defendant did, upon the request of the said plaintiff, by him in that behalf made after the making of the said promise and undertaking, and before the day of exhibiting, &c. to wit, on the first day of April A. D. 1770, to wit, at, &c. aforesaid, put said messuage, dovecote, barns, stables, coach-houses, and all other the outhouses with the appurtenances of and belonging to the said farm in the said declaration mentioned, into good, sufficient, and tenantable repair, according to the tenor and effect of the said promise and undertaking of the said defendant, by him made in that behalf as aforesaid; and of this he puts himself upon the country, &c. J. MORGAN.

N. B. A notice of set off was added for work and labour by defendant and his servants, and with horses, &c. materials found, goods sold, &c. bargained, &c. money laid out, lent, had, and received, and an account stated.

I doubt whether a plea of set off can extend to the 1st Count, as it founding merely in damages, I have therefore drawn a notice of set off: defendant may at the trial perhaps be let in to the proof of his demand against the whole of the plaintiff's action. J. MORGAN.

RELEASE.

Plan, that the promises were made by the defendant and another, and not by the defendants alone, and that the plaintiffs executed a release to the defendants.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said plaintiffs, *actio non*; because he says, that the said several promises and undertakings in the said declaration mentioned (if any such were made), were and each and every of them was made by him the said defendant, and one A. B. jointly, and not by him the said defendant solely; and that after the making of the said promises and undertakings, and before the exhibiting the bill of the said plaintiffs against him the said defendant, to wit, on, &c. at, &c. the said plaintiffs by their certain writing of release then and there made by them the said plaintiffs to the said A. B. and sealed with the several and respective seals of them the said plaintiffs, and then and there delivered to the said A. B. who is still in possession of the same for the causes therein mentioned and contained, did remise and releate unto the said A. B. his heirs, executors, and administrators, the said several promises and undertakings in the said declaration mentioned, and each and every of them, and all sum and sums of money thereon due, owing, or thereafter to become due, together with all and all manner of action and actions, cause and causes of action, suits, bills, bonds, writings, obligatory debts, dues, duties, sum and sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both at law and in equity, or otherwise howsoever which they the said plaintiffs then had, or which they their heirs, executors, or administrators should or might

might at any time or times thereafter have claim, challenge, or demand for, or by reason or means of any matter, cause, or thing whatsoever, from the beginning of the world unto the day of the date of the said deed or writing of release, as by the said deed or writing of release will more fully appear: And this, &c. wherefore, &c. V. LAWES.

And the said plaintiffs, as to the said plea of the said plaintiff by him above pleaded in bar, say, that they by reason of any thing in that plea alledged, ought not to be barred from having and maintaining their aforesaid action thereof against him the said defendant, because protesting that the several promises and undertakings in the said declaration mentioned, were not, nor was any of them made by him the said defendant, and one A. B. jointly, but by him the said defendant solely: For replication in this behalf the said plaintiffs say, that the said writing of release in the said plea mentioned, is not the deed of them the said plaintiffs: and this they pray may be enquired of by the county, and the said defendant doth the like, &c.

Replication,
non est factum to
the release.

GROOLY
at the suit of } AND said defendant by J. M. her
ELLIS AND ANOTHER. attorney, comes and defends the wrong
said plaintiffs, *actio non*; because he saith, that the said several promises and undertakings in the said declaration mentioned (if any such were made), were, and each and every of them was made by her said defendant, and one William Strong, jointly, and not by her said defendant solely, and that after the making of such promises and undertakings, and before the exhibiting, &c. to wit, on the first day of January 1782, to wit, at London, &c. aforesaid, the said plaintiffs by their certain writing of release, then and there made by said plaintiffs to William Strong, and sealed with the several and respective seals of them said plaintiffs, and then and there delivered to the said William Strong (who is still in possession of the same) for the considerations therein mentioned and contained, did remise and release unto said William Strong, his heirs, executors, and administrators, the said several promises and undertakings in said declaration mentioned, and each and every of them, and all sum and sums of money thereon due and owing, or thereof to become due, together with all and all manner of action and actions, cause and causes of action, suit, bills, bonds, writings obligatory, debts, dues, duties, sum or sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both at law and in equity, or otherwise howsoever, which they said plaintiffs then had, or which they, their heirs, executors, or administrators should and might at any time or times hereafter have, claim, challenge, or demand for, or by reason or means of any more cause or thing whatsoever, from the beginning of the world unto the day of the date of said deed

Plea, that the promises, &c. were made by defendant and another, and not by defendant alone, and that plaintiff had executed a release to defendant's co-contractor.

or

PLEA.—RELEASE.—REPLICATION.

or writing of release, as by said deed or writing of release will fully appear: And this said defendant is ready to verify, wherefore, &c. if, &c.

V. LAWES.

Replication to
the last plea,
non est factum.

ELLIS AND ANOTHER
against
GROOLY.

And said defendant, as to said plea of said defendant by her above pleaded in bar say, that they, by reason of any thing in that plea alledged, ought not to be barred from having their aforesaid action thereof against him said defendant, because protesting that the said several promises and undertakings in said declaration mentioned were not, nor was any of them made by her said defendant, and one William Strong jointly, but her said defendant solely: For replication in this behalf, said plaintiffs say, that said writing of release in said plea mentioned, is not the deed of them said plaintiffs; and this they pray may be enquired of by the country, and said defendant doth the like, wherefore, &c.

(a) Plea to *assumpsit* by executors, that their testator sold to the plaintiff a cow for 7l. which at the time of his death was unpaid, and that the executors and the plaintiff agreed to release each other, on condition of the defendant's paying the plaintiff thirteen pounds.

FIRST. General Issue. And for further plea in this behalf, the said defendants by leave of, &c. *actio non*; because they say the said A. B. (the testator) in his lifetime after the making of the said several promises and undertakings in the said declaration mentioned, to wit, on, &c. at, &c. bargained, sold, and delivered to the said plaintiff, a certain cow of him the said A. B. at and for a certain large price or sum of money, to wit, at and for the price or sum of seven pounds seven shillings, of lawful money of Great Britain, to be therefore paid by the said plaintiff to the said testator, which said sum of money at the time of his death was wholly in arrear and unpaid to him, and the said defendants further say, that then and after the death of the said A. B. and before the exhibiting the bill of the said plaintiff, to wit, on, &c. at, &c. the said sum of seven pounds seven shillings being and then and there wholly remaining unpaid by the said plaintiff to the said defendants, as executors as aforesaid of the said A. B. it was agreed by and between the said defendants as executors as aforesaid, and the said plaintiffs in manner following, that is to say, that the said defendants as executors as aforesaid, should *release* and discharge the said plaintiff from the payment of the sum of seven pounds seven shillings, so remaining due as aforesaid, and should pay to the said plaintiff so much money, as together with the said sum of seven pounds seven shillings, so to be released and discharged as aforesaid, should make up and amount to the sum of twenty pounds, of, &c. for and in *full satisfaction* and discharge of the said several promises and undertakings of the said A. B. in his lifetime to the said plaintiff made in the said declaration mentioned; and the said defendants as executors further say, that in pursuance of the said agreement so made as aforesaid, and long before the exhibiting of the bill of the said plaintiffs, to wit, on, &c. at, &c. they the

(a) Pleas, &c. by Executors, see post; and see Accord and Satisfaction, and Payment, ante.

said

said defendants did release and discharge the said plaintiff from the payment of the said sum of seven pounds seven shillings so remaining unpaid as aforesaid, and did pay him a large sum of money, to wit, the sum of twelve pounds thirteen shillings, of, &c. which said sum of twelve pounds thirteen shillings, together with the said seven pounds seven shillings so released as aforesaid, amounted to the said sum of twenty pounds, which said sum of twelve pounds thirteen shillings so paid as aforesaid, together with the said release and discharge of the said sum of seven pounds seven shillings, he the said plaintiff then and there accepted and received of and from the said defendants as executors as aforesaid, for and in full satisfaction and discharge of the said several promises and undertakings in the said declaration mentioned, and this, &c. wherefore, &c.

Drawn by MR. CROMPTON.

SET OFF.

FIRST, *Non Assumpsit*, and notice of set off. Take notice that the above named defendant at the trial of this cause, &c. (in common form), that is to say, in the sum of six pounds of, &c. under and by virtue of an agreement before that time made between the said plaintiff and the said defendant, whereby it was agreed, that in consideration that the said defendant, at the special instance and request of the said plaintiff, had before that time recommended the said plaintiff to and had procured for him certain orders for making shoes, he the said plaintiff being a shoemaker, to be by him the said plaintiff executed and performed, at and for a large price or sum to be therefore paid to him for the same, he the said plaintiff should pay to the said defendant, and the said plaintiff then and there undertook, and faithfully promised the said defendant to pay him the sum of two shillings in the pound for every pound to be by him the said Samuel received for the price of the said shoes, and for the making of the same: And the said defendant in fact says, that he the said plaintiff did, in consequence of the recommendation of the said defendant, and of his procuring for him the said orders, receive a large sum of money, to wit, the sum of sixty pounds, of, &c. for the making of the aforesaid shoes, whereby he the said plaintiff became liable to pay to the said plaintiff the sum of six pounds, being at and after the rate of two shillings in the pound for each and every pound so received by the said plaintiff for the making of the said shoes, whereby he the said plaintiff became and was indebted to her the said defendant in the said sum of six pounds as aforesaid; and also in the further sum of, &c. (Money lent, &c.)

Drawn by MR. GRAHAM.

AND

To an action of
assumpsit, plea
of set off for
work and la-
bour, &c. as a
factor.

Work and la-
bour.

As a factor.

AND the said W. W. by J. P. his attorney, comes and de-
fends the wrong and injury, when, &c. and saith that he did not
undertake and promise in manner and form as the said W. B. above
complains thereof against him, and of this he puts himself upon
the country, and the said W. B. doth the same, and the said W.
by leave of the Court first had and obtained, according to the form
of the statute in such case made and provided, further says, that
the said Worthington ought not to have or maintain his said action
against him, because he says, that the said Worthington, on the
day of exhibiting his said bill against the said W. to wit, on the
twenty-third of January, A.D. 1762, at Topsham, in the county
aforesaid, was and now is indebted unto the said William in the
sum of five hundred pounds, of lawful money of Great Britain, for
divers goods, wares, and merchandizes, and also in the further
sum of five hundred pounds for money lent and advanced, and
also money had and received, money laid out, and expended, &c.
and also in the further sum of five hundred pounds of like lawful
money for work and labour, service, care, diligence, and attend-
ance of the said William, by him the said William, for and at the
like instance and request of the said Worthington, and in and about
his lawful business and affairs before that time done and performed,
used, undertaken, exercised, and employed: And also in the fur-
ther sum of five hundred pounds of like lawful money, for other
work and labour of the said William as the factor, agent, or ser-
vant of the said Worthington, before that time done and per-
formed at the like instance and request of the said Worthington,
and also (account stated), which said several sums of five hundred
pounds, &c. amounting in the whole to the sum of three thousand
five hundred pounds, and on the day of the exhibiting of the said
bill of the said Worthington, were and still are due and owing
from the said Worthington to the said William: And the said
William further saith, that he hath been, and still is ready, and
doth now offer, according to the form of the statute in this case
made and provided, to *set off* against the money which in and by
this suit shall appear to be due from him the said W. to him the
said Worthington, so much of the said three thousand five hun-
dred pounds as was aforesaid due to him the said W. as will satisfy
such money as shall appear to be due to the said Worthington:
And this, &c.

J. DUNNING.

Plea of general
issue and set off
of a judgment
debt in B. R. to
action of *as-
sumpsit*.

WITTEY } AND the said Robert Wittey, by John Wybourn
at suit of } his attorney, comes and defends the wrong and injury,
JAQUES. } when, &c. and says, that he did not undertake and
promise in manner and form as the said R. J. hath above thereof
complained against him; and of this he puts himself upon the
country, &c.: And for further plea in this behalf, the said de-
fendant, by leave, &c. says (*actio non*); because he says that the
said plaintiff, before and at the time of the exhibiting of the said
bill of the said plaintiff's, was and still is indebted to the said defend-
ant

ant in more money than is due and owing from said defendant to said plaintiff upon the several promises and undertakings in said declaration mentioned; that is to say, in the sum of three hundred and forty pounds ten shillings, upon a judgment, and recovered by said defendant against said plaintiff, heretofore, to wit, in the term of the Holy Trinity, in the twenty-second year of the reign of our lord the now king, before the king himself, at Westminster aforesaid, in a plea of trespass upon the case, upon promises, whereby it was considered by the said court that the said defendant should recover against the said plaintiff the said sum of three hundred and forty pounds ten shillings for his damages which he had sustained, as well by occasion of the non performance of several promises and undertakings then lately made by the said plaintiff to said defendant, as for his costs and charges by him about his suit in that behalf expended, whereof the said plaintiff was convicted, as by the record and proceedings thereof remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, more fully appears; which said judgment still remains in full force and effect, not reversed, annulled, discharged, or satisfied, and which said sum of money so recovered by the said defendant against said plaintiff, or so much thereof as shall be necessary in that behalf, said defendant hath been and now is ready to set off, and now offers to set off against the said several sums of money due and owing from said defendant to said plaintiff, by virtue of the several promises and undertakings in such declaration mentioned, according to the form of the statute in such case made and provided; and this he said defendant is ready to verify, wherefore he prays judgment if said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

Geo. Wood.

DECLARATION of Easter term, 29. Geo. 3. in *indebitatus assumpsit* for fifty pounds, for a surgeon's bill, and common Counts; damages fifty pounds: Plea, Trinity term, 29. Geo. 3. 1st, General issue; *non assumpsit*, and issue. 2d, And for further plea in this behalf the said J. Wagner, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said John Franklin ought not to have or maintain his aforesaid action thereof against him, because he says, that the said John Franklin before and at the time of the exhibiting of the bill of the said John Franklin against the said John Michael, was, and still is indebted to the said John Michael in more money than is due and owing from the said John Michael to the said John Franklin, upon the several promises and undertakings in the said declaration mentioned, that is to say, in the sum of fifty-one pounds ten shillings upon a judgment, heretofore, to wit, in the term of St. Michael, in the twenty-ninth year of the reign of our sovereign lord the now king, obtained by the said John Michael against the said John Franklin, in the court of our lord the king, before the king himself, at Westminster, in the county of Middlesex, in a plea of trespass on the case, upon

Plea of debt on judgment, by way of set off; Replication, that since the recovery thereof and plea pleaded, defendant levied the sum due upon it, and opinion.

promises, whereby it was considered by the said court, that the said John Michael should recover against the said John Franklin the said fifty-one pounds ten shillings for his damages which he had sustained, as well by reason of not performing of certain promises and undertakings then lately made by the said John Franklin to the said John Michael, as for his costs and charges by him about his suit in that behalf expended, whereof the said John Franklin was convicted, as by the record and proceedings thereof remaining in the said court of our said lord the king, before the king himself, to wit, at Westminster aforesaid, more fully appears; which said judgment still remains in full force and effect, not reversed, annulled, discharged, or satisfied; and which said sum of money so recovered by the said John Michael against the said John Franklin, or so much thereof as shall be necessary in that behalf, the said John Michael always hath been, and now is ready and willing, and hereby offers to set off and allow to the said John Franklin against the said several sums of money due and owing from the said John Michael to the said John Franklin, by virtue of the said several promises and undertakings of the said John Michael in the said declaration mentioned, according to the form of the statute in this case made and provided; and this the said John Michael is ready to verify, wherefore he prays judgment if the said John Franklin ought to have or maintain his aforesaid action thereof against him, &c.

GEO. WOOD.

Replication.

FRANKLIN } And the said John Franklin, as to the said plea
versus } of the said John Wagner by him above pleaded in
WAGNER. } bar, says, that he by reason of any thing therein al-
leged, ought not to be barred from having and maintaining his
aforesaid action thereof against the said John Wagner, because he
says, that though true it is that such judgment as is therein men-
tioned was obtained against the said John Franklin, yet he the said
John Franklin, according to the form and statute in such case
made and provided, says, that after the obtaining of the said judg-
ment, and since the said plea of the said John Wagner, to wit, on
the day of now last past, he the said John Franklin
did pay to the said John Wagner the said sum of fifty-one pounds
ten shillings by the said judgment recovered, and in the said se-
cond plea above-mentioned to be due thereon, in full satisfaction
and discharge of the said judgment, to wit, at Westminster aforesaid, in the county aforesaid; and this he the said John Franklin is
ready to verify, wherefore he prays judgment and his damages by
him sustained, by reason of the non-performance of the said several
promises and undertakings of the said John Wagner in the said de-
claration mentioned to be adjudged to him, &c.

It strikes me on very great considera-
tion which I have given this case, that
the defendant by levying the money since
his plea due upon the judgment pleaded
by way of set off, has put himself in the
same situation as if he had not pleaded it

at all; and that the plaintiff is compe-
tent to shew such fact in his replication
under the equity of the stat. of 4. Ann.
c. 16. s. 12. to the effect I have above
stated.

T. BARROW.

AND the said defendants, as to the said plea of the said plaintiffs, by him first above pleaded by way of new assignment, and in reply to the said plea of the said defendants by them secondly above pleaded in bar, say, that they did not undertake and promise in manner and form as the said plaintiff hath above in his said new assignment complained against them; and of this they put themselves upon the country, &c. : And for further plea in this behalf, as to all the said promises and undertakings in the said new assignment mentioned, the said defendants, by leave of, &c. say, *actio non*; because they say, that the said plaintiff now is, and at the day of making the said new assignment was, indebted to the said defendants in more money than is due and owing to him from them upon the said several supposed promises and undertakings in the said new assignment mentioned, that is to say (set-off in usual form for money paid, lent, &c. ; account stated, &c.) so much of which said several sums of money so due and owing from the said plaintiff to the said defendants, as will be sufficient to satisfy the said plaintiff the damages which he hath sustained by reason of the non-performance of the said several supposed promises and undertakings in the said new assignment mentioned, they the said defendants will deduct and set off according to the form of the statute in such case made and provided; and this, &c. ; wherefore, &c.

(a) Plea to new assignment is, *Non assumpsit*; 2d, a set-off.

(a) See replication.—New assignment to a plea of judgment recovered, ante 151.

AND the said George Bagno, by James Poarce his attorney, comes and defends the wrong and injury, when, &c. and says, that the said defendant ought not to have or maintain his said action thereof against him, because he says, that the said plaintiff, before the commencement of this suit, to wit, in Hilary term now last past, in the court of our lord the king of the bench at Westminster, in the said county of Middlesex, before the right honourable sir William Eyre, knight, and his companions, then justices of our lord the king of the bench aforesaid, at Westminster aforesaid, came in their own proper persons, and then and there, in the said court, before the said justices, duly taken and enrolled for a just and true debt, acknowledged themselves to owe to the said George the sum of one thousand pounds of lawful money of Great Britain, which they and each of them willed to be levied and made of their lands, goods, and chattels, as by the said recognizance now remaining inrolled and affiled in the court of our said lord the king of the bench at Westminster aforesaid, more fully appears; which said recognizance still remains wholly due, in full force and effect, not in any wise paid, set aside, or satisfied, and which greatly exceeds the money due and owing to the said plaintiffs on the several promises and undertakings in the said declaration mentioned, to wit, at Westminster aforesaid, and from which the said George is ready and willing to deduct and set off, according to the form of the statute in such case made and provided, the damage sustained by the said plaintiff by reason of the said supposed promises and undertakings in the said declaration men-

Plea of a recognizance entered into by plaintiff to defendant in another court, by way of set-off.

PLEAS IN ASSUMPSIT.

tioned, and which amount only to seven hundred and seventy-two pounds eight shillings and elevenpence, to wit, at Westminster aforesaid; and this he is ready to verify; wherefore he prays judgment if the said plaintiff ought to have his aforesaid action thereof maintained against him, &c. T. BARROW.

Plea of set-off.

Work, &c.

Necessaries.

Goods.

Money lent.

Laid out,

Had and received.

Account stated.

AND the defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the plaintiff ought not to have or maintain his aforesaid action thereof against him, because he saith, that the said plaintiff, before and at the time of exhibiting of the bill (*or suing forth of the original writ*) of the said plaintiff against him the said defendant, to wit, at Westminster aforesaid, was, and from thence hitherto hath been, and still is, indebted to the said defendant in a much larger sum of money than the money so due and owing from the said defendant to the said plaintiff, and whereof the said plaintiff hath above complained against him the said defendant, to wit, in the sum of pounds of lawful money of Great Britain, for the work and labour, care and diligence, of the said defendant before that time done, performed, and bestowed by him the said defendant in and about the business of the said plaintiff, and for the said plaintiff, and at his special instance and request, and for meat, drink, washing, apparel, lodging, and other necessaries before that time found and provided by the said , for one C. D. the daughter of the said plaintiff, and at his the said plaintiff's like special instance instance and request, and for divers goods, wares, and merchandizes by the said defendant before that time sold and delivered to the said plaintiff, at his like special instance and request, and for money by the said defendant before that time lent and advanced to the said plaintiff, and at his like special instance and request, and for other money by the said defendant before that time laid out, expended, and paid for the said plaintiff, at his like special instance and request, and for other money by the said plaintiff before that time had and received to the use of the said defendant, and for other money before that time due and owing from the said plaintiff to the said defendant, upon an account stated between the said plaintiff and the said defendant; which said sum of money so due and owing from the plaintiff to the said defendant exceeds the damages sustained by the said plaintiff, by reason of the not performing of the said several promises and undertakings of the said defendant in the said declaration mentioned, and out of which said sum of money he the said defendant is ready and willing, and hereby offers to set off and allow to the said plaintiff so much money as the damages sustained by the said plaintiff, on occasion of not performing the said several promises and undertakings of him the said defendant in the said declaration mentioned, amount to; and this he the said defendant is ready to verify: wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

Drawn by MR. WARREN.

And

And the said plaintiff saith, that he, by reason of any thing by the said defendant in his said plea above alledged, ought not to be barred from having and maintaining his aforesaid action against him, because he saith, that he the said plaintiff was not, at the time of, &c. nor is now indebted to the said defendant in manner and form as the said defendant hath above in his said plea alledged; and this he the said plaintiff prays may be enquired of by the country, and the said defendant doth the like, &c.; therefore, &c.

Replication.

Evans v. Proff. r.
3. T. R. B. R.
186.

RULE

at the suit of

WILSON, administratrix.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and saith, that the said Martha, *actio non*, because he saith, that he the said defendant heretofore, to wit, in Easter term, in the third year of the reign of our lord the now king, impleaded plaintiff as administratrix in the court of our lord the king, before Sir Charles Pratt, knight, and his brethren, then his Majesty's justices of the bench at Westminster in the county of Middlesex, in a plea of trespass on the case, then and there declaring by, &c. his attorney, against the said plaintiff, as administratrix as aforesaid in that plea whereas, &c. [here recite the declaration], and afterwards, to wit, in Trinity term in the third year aforesaid, the said plaintiff came into the said court of our said lord the king of the bench at Westminster aforesaid, by, &c. her attorney, and defended the wrong and injury, when, &c. and the said, &c. [here recite the plea, which in this case was a judgment outstanding, and *plene administravit præter, &c.*] and such proceedings were thereupon had, that afterwards, that is to say in Michaelmas term, in the fourth year of the reign of our lord the now king, before Sir Charles Pratt, knight, and his companions, then his Majesty's justices of the bench at Westminster, the said defendant, by the consideration of the said court, recovered, &c. (set forth the judgment), whereof the said plaintiff, as administratrix in form aforesaid, hath been convicted, as by the record and proceedings thereof remaining in the said court of our said lord the king of the bench aforesaid, at Westminster aforesaid, more fully appears; which said judgment still remains in its full force, strength, and effect, not in the least paid, satisfied, reversed, or made void: And the said defendant further saith, that the monies recovered by the said judgment, and now due and owing to the said defendant, exceed the monies due and owing from the said defendant to the said plaintiff, as administratrix as aforesaid, and for which the said plaintiff hath above complained against the said defendant, to wit, at, &c. aforesaid, and that said defendant is ready and willing, and hereby offers to set-off and allow to the said plaintiff, as administratrix as aforesaid, and of the damages aforesaid, so recovered in form aforesaid, all such damages as the said George, in his life-

Plea of set-off.
Money due to defendant on a judgment recovered by him against the plaintiff, as administratrix.

See Petl. 143. for plea of set-off of money due under a judgment recovered by defendant against the plaintiff.

PLEAS IN ASSUMPSIT.

time, or the said plaintiff, as such administratrix as aforesaid, have or hath sustained on occasion of the not performing of the said several promises and undertakings in the said declaration mentioned, according to the form of the statute in such case lately made and provided; and this, &c. ; wherefore, &c. if, &c.

J. MORGAN.

Plea of set off
for work and la-
bour done by
defendant.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and saith, that he did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c. ; and for further plea as to the first promise and undertaking in the said declaration mentioned, the said defendant, by leave, &c. saith, that the said defendant, *actio non*; because he saith, that the said defendant did, upon the request of the said plaintiff by him in that behalf made, after the making of the said promise, and before the day of exhibiting, &c. to wit, on the first day of April A. D. 1770, to wit, at, &c. aforesaid, put the said messuage, dove-cote, barns, stables, coach-houses, and all other the out-houses, with the appurtenances, of and belonging to the said farm in the said declaration mentioned, into good, sufficient, and tenantable repair, according to the tenor and effect of the said promise and undertaking of the said defendant by him made in that behalf as aforesaid; and of this he puts himself upon the country, &c.

J. MORGAN.

Plea of *non assumpsit* to all the Counts, except 2l. 11s. tender to that, and with leave of court, a set off to all the money, except 2l. 11s. tendered.

AND the said W. by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to all the said several supposed promises and undertakings in the said declaration mentioned, except as to the sum of two pounds eleven shillings, parcel of the said several sums of money in the said declaration mentioned, says, that he did not undertake and promise in manner and form as the said J. hath above thereof complained against him; and of this he puts himself upon the country, &c. ; and as to the said sum of two pounds eleven shillings, parcel of the said several sums of money in the said declaration mentioned, the said William saith, that the said J. ought not to have or maintain his aforesaid action thereof against him, to recover more or greater damages than the said sum of two pounds eleven shillings in this behalf, because he saith, that after the making of the said several promises and undertakings in the said declaration mentioned, as to the said sum of two pounds eleven shillings, parcel of, &c. and before the exhibiting of the bill of the said J. against the said W. to wit, on the second day of March, in the year of Our Lord 1791 aforesaid, at, &c. aforesaid, he the said W. was ready and willing, and then and there tendered and offered to pay to the said J. to accept the said sum of two pounds

pounds eleven shillings, parcel of, &c. which of the said W. he the said J. then and there wholly refused: And the said W. in fact further saith, that he the said W. hath always, from the time of the making of the said several promises and undertakings in the said declaration mentioned, as to the said sum of two pounds eleven shillings, parcel, &c. hitherto, to wit, at, &c. aforesaid, been ready to pay, and still is there ready to pay to the said J. the said sum of two pounds eleven shillings, parcel, &c. and now brings the same here into court, ready to be paid to the said J. if he will accept the same; and this he is ready to verify: wherefore he prays judgment if the said J. ought to have or maintain his said action against him, to recover more or greater damages than the said sum of two pounds eleven shillings on this behalf; and for further plea as to the several supposed promises and undertakings in the said declaration mentioned, except as to the said sum of two pounds eleven shillings, parcel, &c. the said William, by leave, &c. *actio non*; because he says, that he the said J. before and at the time of exhibiting the bill of the said J. against the said W. was, and from thence hitherto hath been, and still is, indebted to the said William in a large sum of money, to wit, the sum of ~~two~~ pounds of, &c. for money by the said William before that time lent and advanced to, and paid, laid out, and expended, for the said J. at his request, and for other money before that time due and owing from the said J. to the said W. upon an account stated between them, to wit, at, &c. aforesaid, which said sum of money so due and owing from the said J. to the said W. exceeds the damages sustained by the said J. for and by reason of the not performing of the said several promises and undertakings of the said W. in the said declaration mentioned, except as to the said sum of two pounds eleven shillings, parcel, &c. and out of which said sum of money so due and owing from the said J. to the said W. he the said W. is ready and willing, and hereby offers to set-off and allow to the said J. the full amount of the said damages, except as aforesaid, according to the form of the statute in such case made and provided; and this he the said W. is ready to verify: wherefore he prays judgment if the said J. ought to have or maintain his aforesaid action thereof against him, &c.

Drawn by MR. TIDD.

DANE } AND the said Thomas, by James Tappen- Plea of set-off;
at the suit of } den his attorney, comes and defends the wrong
ADAMS. } and injury, when, &c. and says, that he did not
undertake and promise in manner and form as the said William
hath above thereof complained against him; and of this he puts
himself upon the country, &c.: And for further plea in this behalf,
the said Thomas, by leave of the court here to him for this pur-

PLEAS IN ASSUMPSIT.

pose granted, according to the form of the statute in such case lately made and provided, says, that the said William ought not to have or maintain his aforesaid action thereof against him, because he says, that the said William now is, and on the day of exhibiting of the bill of the said William, was indebted to the said Thomas in more money than is due and owing from the said Thomas to the said William, upon the several promises and undertakings in the said declaration mentioned, that is to say, in the sum of five hundred pounds of lawful money of Great Britain, for so much money by the said Thomas before that time paid, laid out, and expended to and for the use of the said William, at his special instance and request, and in the further sum of five hundred pounds of like lawful money, for so much money by the said Thomas before that time lent and advanced to the said William at his like instance and request, and in the further sum of five hundred pounds of like lawful money, for so much money by the said William before that time had and received to and for the use of the said Thomas; and in the further sum of five hundred pounds of like lawful money, for divers goods, wares, and merchandizes by the said Thomas before that time sold and delivered to the said William at his like instance and request; and in the further sum of five hundred pounds of like lawful money, for work and labour, care and diligence by the said Thomas before that time done, performed, and bestowed for the said William in and about the business of the said William, at his like instance and request, to wit, at Westminster aforesaid, in the county aforesaid, so much of which said several sums of money so due and owing from the said William to the said Thomas, as will be sufficient to satisfy the said William the damages which he hath sustained by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned, he the said Thomas will deduct and sett-off according to the form of the statute in such case lately made and provided; and this he is ready to verify: wherefore he prays judgment if the said William ought to have or maintain his aforesaid action thereof against him, &c.

W. BALDWIN.

Plea of set-off,
of work and
labour, money
lent, laid out,
&c. &c.

AND the said Henry C. by Christopher H. his attorney, comes and defends the wrong and injury, &c. and says, that he did not undertake and promise in manner and form as the said T. H. the elder and T. H. the younger have above thereof in their said declaration complained against him; and of this he puts himself upon the country: and the said T. H. the elder and T. H. the younger do the like: And the said Henry, for further plea in this behalf, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said T. H. the elder and Thomas

Thomas H. the younger, ought not to have or maintain their said action thereof against him the said Henry, because he says, that before and at the time of suing out the original writ of the said Thomas H. the elder and Thomas H. the younger, they the said Thomas H. the elder and Thomas H. the younger were and still are indebted to the said Henry in a large sum of money, to wit, in the sum of three thousand five hundred pounds of lawful money of Great Britain, for divers goods, wares, and merchandizes before that time sold and delivered by the said Henry to the said Thomas H. the elder and Thomas H. the younger, and at their special instance and request, and also in the further sum of three thousand five hundred pounds of like lawful money, for work and labour before that time done, performed, and bestowed by the said Henry, his servants and workmen, of the said Thomas H. the elder and Thomas H. the younger, and at their like special instance and request; and also in the further sum of three thousand five hundred pounds of like lawful money for so much money by the said Henry before that time lent and advanced to the said Thomas H. the elder and Thomas H. the younger, and at their like special instance and request; and also in the further sum of three thousand five hundred pounds of like lawful money, for so much money before that time paid, laid out, and expended by the said Henry for the said Thomas Holman the elder and Thomas H. the younger, and at their like special instance and request; and also in the further sum of three thousand five hundred pounds of like lawful money before that time had and received to the use of the said Henry; and also in the further sum of three thousand five hundred pounds, upon an account stated by and between the said Thomas Holman the elder and Thomas Holman the younger and the said Henry, which said several sums of money exceed the damages sustained by reason of the not performing of the several promises and undertakings in the said declaration mentioned; and this the said Henry is ready to verify: wherefore he prays judgment if the said Thomas Holman the elder and Thomas Holman the younger ought to have or maintain their aforesaid action thereof against him the said Henry, &c.

THOMAS WALKER.

And the said Thomas H. the elder, and Thomas H. the younger, as to the said plea of the said Henry by him secondly above pleaded in bar, say, that they, by reason of any thing in that plea contained, ought not to be barred from having and maintaining their aforesaid action thereof against him, because they say, that they the said Thomas H. the elder and Thomas H. the younger were not, nor are indebted to the said Henry in manner and form as the said Henry has in that plea above alledged; and this they pray may be enquired of by the country: and the said Thomas Holman the elder, and Thomas Holman the younger, do the like; therefore

Replication taking issue on the set off.

PLEAS IN ASSUMPSIT.

therefore as well to try this issue as the said other issue between the parties above joined, the sheriff is commanded that he cause to come here in three weeks of the Holy Trinity, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

J. ADAIR.

Plea, general
issue, and set off.

AND the said Charles, by Charles H. the younger, his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said Andre Lefflore hath above thereof complained against him; and of this he puts himself upon the country, &c.: And for further plea in this behalf, the said Charles, by leave of the court here to him for this purpose granted, according to the form of the statute in such case lately made and provided, says, that the said Andre L. ought not to have or maintain his aforesaid action thereof against him; because he says, that the said Andre L. now is, and on the day of exhibiting the bill of the said Andre L. was indebted to the said Charles in more money than is due and owing from the said Charles to the said Andre L. upon the said several promises and undertakings in the said declaration mentioned, that is to say, in the sum of one hundred pounds, of lawful money, upon an account before that time stated and settled between the said Andre L. and the said Charles, whereby the said Andre L. was found in arrear to the said Charles in the sum of one hundred pounds of like lawful money; and in the further sum of one hundred pounds, of like lawful money, for so much money by the said Charles before that time paid, laid out, and expended, to and for the use of the said Andre L. at his like instance and request; and in the further sum of one hundred pounds, of like lawful money, by the said Andre L. before that time had and received to and for the use of the said Charles; and in the further sum of one hundred pounds, of like lawful money, for so much money by the said Charles before that time lent and advanced to the said Andre L. at his like instance and request, to wit, at Westminster aforesaid, in the county aforesaid, so much of which said several sums of money, so due and owing from the said Andre L. to the said Charles as will be sufficient to satisfy the said Andre L. the damages which he hath sustained by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned, he the said Charles will deduct and set off, according to the form of the statute in such case lately made and provided; and this he is ready to verify, wherefore he prays judgment if the said Andre L. ought to have or maintain his aforesaid action thereof against him, &c.

W. BALDWIN.

Plea of set off.

AND the said Benjamin, by Edward Yalden his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form

form as the said Thomas hath above thereof complained against him; and of this he puts himself upon the country, &c.: And for further plea in this behalf the said Benjamin, by leave of the court here to him for this purpose granted, according to the form of the statute in such case lately made and provided, says, that the said Thomas ought not to have or maintain his aforesaid action thereof against him; because he says, that the said Thomas now is, and on the day of exhibiting the bill of the said Thomas was, and still is, indebted unto him the said Benjamin in more money than is due and owing from the said Benjamin to the said Thomas, upon the several promises and undertakings in the said declaration mentioned, that is to say, in the sum of fifty pounds, of lawful money of Great Britain, for meat, drink, washing, and lodging by the said Benjamin before that time found and provided for the said Thomas, at his special instance and request; and in the further sum of fifty pounds, of like lawful money, for so much money by the said Benjamin before that time paid, laid out, and expended, to and for the use of the said Thomas, at his like instance and request; and in the further sum of fifty pounds, of like lawful money, for work and labour, care and diligence, by the said Benjamin and his servants before that time done, performed, and bestowed for the said Thomas, in and about the business of the said Thomas, at his like instance and request; and in the further sum of fifty pounds, of like lawful money, for the keeping of divers horses, mares, and geldings of the said Thomas, and for horse-meat and other necessary provender by the said Benjamin before that time found and provided for the said horses, mares, and geldings, at the like instance and request of the said Thomas; and in the further sum of fifty pounds, of like lawful money, for so much money by the said Thomas before that time had and received, to and for the use of the said Benjamin, to wit, at Godalming, in the said county of Surry; so much of which said several sums of money, so due and owing from the said Thomas to the said Benjamin, as will be sufficient to satisfy the said Thomas the damages which he hath sustained, by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned, he the said Benjamin will deduct and set off, according to the form of the statute in such case lately made and provided; and this he is ready to verify: wherefore he prays judgment if the said Thomas ought to have or maintain his aforesaid action thereof against him, &c.

LESCELLES, ESQ.
at the suit of
MAYHEW AND ANOTHER.

AND the said Balthazar A. by Charles H. the younger, his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said John and William have above thereof complained against him; and of this he puts himself upon the country, &c.: And for further plea in this behalf, the

Plea of set off.

PLEA.—SET OFF.

the said Balthazar Anthony, by leave of the court here to him for this purpose granted, according to the form of the statute in such case lately made and provided, says, that the said John and William now are, and on the day of exhibiting the bill of the said John and William were indebted unto the said Balthazar Anthony in more money than is due and owing from the said Balthazar Anthony to the said John and William, upon the said several supposed promises and undertakings in the said declaration mentioned, that is to say, in the sum of two hundred pounds of lawful money of Great Britain, for so much money by the said Balthazar Anthony, before that time paid, laid out, and expended to and for the use of the said John and William, at their special instance and request; and in the further sum of two hundred pounds, of like lawful money, for so much money by the said John and William before that time had and received to and for the use of the said Balthazar Anthony, that is to say, at Westminster aforesaid, in the county aforesaid; so much of which said several sum of money, so due to the said Balthazar Anthony from the said John and William, as will be sufficient to satisfy the said John and William the damages which they have sustained, by reason of the non-performance of the said supposed promises and undertakings in the said declaration mentioned, he the said Balthazar Anthony will deduct and set off and allow, according to the form of the statute in such case lately made and provided; and this the said Balthazar Anthony is ready to verify; wherefore he prays judgment if the said John and William ought to have or maintain their aforesaid action against him, &c.

W. BALDWIN.

Plea, general issue, and notice of set off of a promissory note, and one hundred pound for the rent of a house, &c.

FIRST, General issue. (Begin notice of set off in the usual form), that is to say, in the sum of fifteen pounds fifteen shillings, of, &c. upon and by virtue of a certain promissory note in writing, made and subscribed by the said plaintiff, and bearing date, &c. and delivered by the said plaintiff to one J. W.; whereby the said plaintiff promised to pay to the said J. W. (by the name and description of, &c.) or order, the sum of fifteen pounds fifteen shillings on demand, for value received by the said plaintiff; and which said note, before the exhibiting of the bill of the said plaintiff, had been duly indorsed by the said J. W. to the said defendant, and the payment thereof duly demanded of the said plaintiff by the said defendant; and which said note, before the exhibiting of the bill of the said plaintiff, was, and still is, in full force, and wholly unpaid and unsatisfied; And also in the sum of one hundred pounds, of, &c. for the use and occupation of divers messuages, lands, and tenements of the said defendant, with the appurtenances, situate, lying, and being at, &c. before that time had, held, used, occupied, and enjoyed by the said plaintiff for a long space of time then elapsed, at his special instance and request, and by

by the permission and sufferance of the said defendant. (Money paid, &c. &c.; and common conclusion to the notice.)

Drawn by MR. GRAHAM.

TENDER.

AND the said T. H. by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to all the said supposed promises and undertakings of the said Thomas in the said declaration mentioned; and also as to all the said sums of money therein specified and mentioned, except as to one pound and one shilling, part of the said several sums of money in the said declaration mentioned, says, that he did not undertake and promise in manner and form as the said John hath above thereof complained against him; and of this he puts himself upon the country, &c.: And as to the said promises and undertakings in the said declaration mentioned, as to one pound and one shilling, part and parcel of the said several sums of money in the said declaration mentioned, he the said Thomas says, *ad id non*, to recover any further damages against him than the said sum of one pound one shilling, part and parcel of the said several sums of money in the said declaration mentioned and specified; because he says, that after the making of the said several promises and undertakings in the said declaration mentioned, and before the exhibiting the bill of the said John, to wit, on, &c. in the said declaration mentioned, at, &c. he the said Thomas tendered and offered to pay to the said John the said sum of one pound one shilling, part and parcel, &c. which said sum of one pound one shilling, he the said John then and there refused to accept from the said Thomas: And the said Thomas further says, that he has always, from the time of the making of the said several promises and undertakings in the said declaration mentioned, as to the said sum of one pound one shilling, part and parcel, &c. hitherto hath been, and still is, ready and willing to pay to the said John the said sum of one pound one shilling, and now brings the same into court here, ready to be paid to the said John if he will accept the same; and this, &c. wherefore, &c. if the said John ought to have or maintain his aforesaid action thereof against him, to recover any further damages than the said sum of one pound one shilling, part and parcel of the said several sums of money, in the said declaration mentioned and specified.

Drawn by MR. GRAHAM.

AND the said Edward, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that he is not guilty of the premises above laid to his charge, in manner and form as the said Henry hath above thereof complained against him; and

Plea of tender of 30l. to an action brought on an agreement to repair the vicarage house by a clergyman.

ad Plea.

and of this he puts himself upon the country: And for further plea in this behalf, the said Edward, by leave &c. *actio non*, to recover any greater or more damages against him in respect thereof than the sum of thirty pounds, of, &c.; because he says, that after the said vicarage of the said parish church of Feckenham had been so vacated as aforesaid, and after the said Henry had been instituted and inducted into the same vicarage of the parish church of Feckenham as aforesaid, and before the day of exhibiting the bill of the said Henry, to wit, on the said thirteenth day of September, in the said year of Our Lord 1786, at Feckenham aforesaid, in the county aforesaid, he the said Edward tendered and offered to pay to the said Henry the said sum of thirty pounds, to be laid out in the necessary repairs of the said dwelling-house and premises in the said declaration mentioned; which said sum of thirty pounds the said Henry then and there refused to accept from the said Edward: And the said Edward further says, that he the said Edward always from the time of the institution and induction of the said Henry to the vicarage of the parish church of Feckenham aforesaid hitherto, hath been, and still is ready to pay to the said Henry the said sum of thirty pounds; and the said Edward brings the same here into court ready to be paid to the said Henry, if the said Henry will accept the same from the said Edward: And the said Edward avers, that the said sum of thirty pounds was fully sufficient for the necessary repairs of the said dwelling-house and premises in the said declaration mentioned, at the said time when the said vicarage of Feckenham became vacant, as in the declaration is mentioned; and this, &c.: wherefore he prays judgment if the said Henry ought to have or maintain his aforesaid action against him to recover any more or greater damages than the said sum of thirty pounds in this behalf, &c.

FOSTER BOWER.

I have great doubts whether the defendant is entitled to plead a tender in the present case; but think he cannot,

notwithstanding the case in *Str.* Squire v. Archer, 906.; and the case in 3. Lev. 413.

Plea of tender and payment of money into court, which plaintiff takes out, and *similiter* to the rest.

AND the said Samuel, the said Isaac, and the said Thomas, by Daniel C. their attorney, come and defend the wrong and injury, when, &c. and as to all the said several promises and undertakings in the said declaration mentioned, except as to the sum of nine hundred and sixty-nine pounds seventeen shillings and threepence, parcel of the sum of four thousand pounds in the first Count of the said declaration mentioned, say, that they did not undertake or promise in manner and form as the said John, and the said Charles, and the said Osborne have above thereof complained against them; and of this they put themselves upon the country, &c.: And as to the said sum of nine hundred and sixty-nine pounds seventeen shillings and threepence, parcel of the said sum of four thousand pounds in the said first Count of the said declaration mentioned,

mentioned, they say, that the said John, the said Charles, and the said Osborne ought not to have or maintain their said action thereof against them to recover any more or greater damages in this behalf than the sum of nine hundred and sixty-nine pounds seventeen shillings and threepence; because they say, that they the said Samuel, the said Isaac, and the said Thomas always, from the time of the making the aforesaid promise and undertaking in the said first Count of the said declaration mentioned, as to the said nine hundred and sixty-nine pounds seventeen shillings and three-pence hitherto, at London, &c. aforesaid, have been, and still are, ready and willing to pay to the said John, the said Charles, and the said Osborne the said nine hundred and sixty-nine pounds seventeen shillings and threepence; and that they the said Samuel, the said Isaac, and the said Thomas, after the making of the said promise and undertaking in the said first Count of the said declaration mentioned, as to the said sum of nine hundred and sixty-nine pounds seventeen shillings and threepence, and before the exhibiting of the bill of the said John, the said Charles, and the said Osborne, to wit, on the same day and year in the said declaration mentioned, at London &c. aforesaid, offered to pay to the said John, the said Charles, and the said Osborne, the said nine hundred and sixty-nine pounds seventeen shillings and threepence, and then and there tendered the same on payment to them the said John, Charles, and Osborne, to receive which the said John, Charles, and Osborne then and there wholly refused; and the said Samuel, the said Isaac, and the said Thomas now bring the same here into court, ready to be paid to the said John, the said Charles, and Osborne, if they will receive the same; and this they are ready to verify: wherefore they pray judgment if the said John, Charles, and Osborne ought to have or maintain their aforesaid action thereof against them to recover any more or greater damages in this behalf than the said sum of nine hundred and sixty-nine pounds seventeen shillings and threepence: And the said John, Charles, and Osborne, as to the said plea of the said Samuel, Thomas, and Isaac by them above pleaded, as to all the said several promises and undertakings in the said declaration mentioned, except as to the sum of nine hundred and sixty-nine pounds seventeen shillings and threepence, parcel of the said sum of four thousand pounds in the said first Count of the said declaration mentioned, and concerning which the said Samuel, Thomas, and Isaac, have above put themselves upon the country; the said Charles, John, and Osborne do so likewise. And as to the said nine hundred and sixty-nine pounds seventeen shillings and threepence in the said first promise and undertaking mentioned, and which said nine hundred and sixty-nine pounds seventeen shillings and threepence the said Samuel, Thomas, and Isaac have above brought into court, as in their said plea in that behalf mentioned, the said John, Charles, and Osborne now take and accept the same out of court; therefore let the said Samuel, Thomas, and Isaac be thereof acquitted, &c.; therefore let a jury come thereupon before our lord the king, on, &c.

who

PLEA.—REPLICATION.

who are in no wise a kin either to the said John L. Charles P. and Osborne R. or to the said Samuel C. Isaac H. and Thomas B. to take cognizance on their oaths of the whole truth of the premises, because, as well the said Samuel C. Isaac H. and Thomas B. as the said John L. Charles P. and Osborne R. have put themselves upon that jury; the same day is given to the parties aforesaid at the same place.

F. BULLER.

Plea of non-*assumpsit* to part a tender to the residue.

See Impey's B. R. 227. &c.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c.; and as to the second, third, fourth, and fifth Counts of the aforesaid declaration, and as to twenty pounds, part of the said sum of thirty pounds in the said first promise and undertaking in the said declaration also mentioned, says, that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c.: And as to ten pounds, residue of the said thirty pounds in the said first promise and undertaking in the said declaration mentioned, he the said defendant says, that the said plaintiff ought not to have or maintain his aforesaid action against him to recover any more or greater damages than ten pounds in this behalf; because he says that the said defendant, after the making of the said first promise and undertaking as to the said ten pounds, residue of the said thirty pounds in the said first promise and undertaking in the said declaration mentioned, and before the exhibiting, &c. to wit, in, &c. at, &c. was ready to pay, and then and there offered to pay to the said plaintiff the said sum of ten pounds, residue, &c. and then and there tendered payment thereof to the said plaintiff, to receive which of the said defendant he the said plaintiff then and there wholly refused: And the said defendant further saith, that he the said defendant hath always from the time of the making of the said first promise and undertaking as to ten pounds, residue, &c. hitherto at, &c. aforesaid, been ready to pay, and yet is there ready to pay to the said plaintiff the said sum of ten pounds, and now brings the same here into court ready to pay to the said plaintiff, if he the said plaintiff will accept the same: And this he the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him *the said defendant to recover any more or greater damages than ten pounds in this behalf, [or thus] against him in respect to the said ten pounds, residue of the said thirty pounds in the said first promise and undertaking in the said declaration mentioned, to recover any more or greater damages than ten pounds.*

V. LAWES.

Replication to the last plea, denying the tender.

And the said plaintiff, as to the plea of the said defendant secondly above pleaded as to the said ten pounds, residue of the said thirty pounds in the said first promise and undertaking in the said

saïd declaration mentioned, says, that the saïd plaintiff by reason of any thing in the saïd plea above alledged, ought not to be barred from having and maintaining, &c. to recover his full damages, by reason of the not performing of the saïd first promise and undertaking as to the ten pounds, because he saith, that the saïd defendant did not offer to pay to him the saïd plaintiff the saïd sum of ten pounds in manner and form as the saïd defendant hath in pleading above alledged; and this he the saïd plaintiff prays may be enquired of by the country, and the saïd defendant doth the like, therefore, &c.

And thereupon the saïd plaintiff freely takes and accepts out of the court here the sum of ten pounds, so tendered and paid into court here as aforesaid; therefore as to the saïd sum of ten pounds the saïd plaintiff is satisfied, and as to the trial of the issue above joined between the parties (let a jury come before our lord the king, at Westminster, on next, after) aforesaid, it is commanded to the sheriff that he cause to come here, on, &c. twelve, &c. and who neither, &c. to recognize, &c. because as well, &c.

Another replication to such plea, admitting the tender and accepting the money out of court.
See Impey B.R. 229. 264, &c.
S. P. Morg. Ent. 220.

Drawn by MR. WARREN.

AND the saïd plaintiff, as to the saïd plea of the saïd defendant by him above pleaded, as to the saïd promise and undertaking in the saïd declaration secondly mentioned, with respect to six pounds six shillings, parcel of the saïd twelve pounds twelve shillings in that promise mentioned, says that he the saïd plaintiff ought not by any thing in that plea alledged to be barred from recovering more damages in that behalf from him the saïd defendant than the saïd six pounds six shillings, because he saith, that after the making the saïd promise and undertaking as to the saïd six pounds six shillings, parcel, &c. that is to say, on the nineteenth day of May, in the thirty-first year of the reign of our Lord the now king, he the saïd plaintiff, for the recovery of his damages which he had sustained, as well by the non-performance of the saïd second promise and undertaking as to the saïd six pounds six shillings, parcel, &c. and likewise as to the residue of the money in that promise mentioned, as also by the not performing of the several other promises and undertakings in the aforesaid declaration mentioned, prosecuted out of the court of our saïd lord the king; before the king himself (the saïd court then and still being held at Westminster, in the saïd county of Middlesex), a certain precept called a bill of Middlesex, against the saïd defendant, whereby it was commanded to the then sheriff of Middlesex that he should take the saïd defendant, and Robert Roe, if they might be found in his bailiwick, and that he should keep them safely, so that he might have their bodies before the lord the king at Westminster, on Friday next after the morrow of the Holy Trinity then next following, to answer the saïd plaintiff in a plea of trespass, and that the saïd sheriff should then have there that precept, at which day of the return of that

Replication to a plea of tender, that plaintiff sued out a bill of Middlesex, with continuances, before the making of any tender by defendant.

precept, that is to say, on Friday next after the morrow of the Holy Trinity, in the thirty-first year aforesaid, before our lord the king, at Westminster, came the said plaintiff in his own proper person, and offered himself against the said defendant in the plea aforesaid: And the sheriff of Middlesex aforesaid did not send the said precept, nor did he do any thing therein, nor did the said defendant come or appear according to the exigency of that precept; wherefore the said plaintiff prayed another precept of the said lord the king to be directed to the sheriff of the county of Middlesex, in form aforesaid, and it was granted to him, returnable before our lord the king on Wednesday next after eight days of the Holy Trinity then next following, for the said defendant to answer to the said plaintiff in the plea aforesaid, the same day was given to the said plaintiff there, &c. at which day, at the return of the said last-mentioned precept, that is to say, on Wednesday next after eight days of the Holy Trinity, before our lord the king, at Westminster, came the said plaintiff, and the said defendant then and there also appeared in the said court, to answer to the said plaintiff in the plea aforesaid, according to the exigency of the said last-mentioned precept, and the said plaintiff further saith, that the said several precepts so prosecuted as aforesaid, were respectively prosecuted by him the said plaintiff against the said defendant, with intent to implead the said defendant for the several causes of action aforesaid, in the said declaration specified, and to cause and compel the said defendant to appear in the said court here, in order that the said plaintiff might declare against him for the several causes of action, according to the course and custom of the said court, and that he the said plaintiff in pursuance of such his intentions, exhibited his aforesaid bill and declared against the said defendant, upon the said several causes of action in manner and form aforesaid, and therein mentioned, for the said six pounds six shillings, parcel of the said twelve pounds twelve shillings in the said second promise and undertaking mentioned, and the said plaintiff further says that the said defendant did not at any time before the suing forth the first-mentioned precept out of the court of our lord the king, before the king himself, in manner aforesaid, tender or offer to pay to the said plaintiff the said six pounds six shillings, parcel of the said twelve pounds twelve shillings in the said second promise and undertaking mentioned, and this he the said plaintiff is ready to verify; wherefore he prays judgment and his damages, on occasion of not performing of the said second promise and undertaking as to the said six pounds six shillings, parcel, &c. to be adjudged to him, &c.

J. YATES.

In strictness perhaps the present replication may defeat the tender, but in a case of this kind, I should recommend it to the plaintiff to agree the matter with the defendant, without running the

risque of any further expence to himself, where the debt is so small, and where the defence will appear in so favourable a light.

J. YATES.

In the Exchequer of Pleas.

BEAVAN } AND the said plaintiff, as to the plea of the said
versus } defendant by him above pleaded, as to thirty pounds
 BEAVAN, JUN. } thirteen shillings, residue of the said several sums
 of money in the said declaration mentioned, says that he the said
 plaintiff, by reason of any thing in that plea alledged, ought not
 to be barred from having and maintaining his aforesaid action to
 recover his full damages in respect of the said thirty pounds thir-
 teen shillings, because protesting that the said plea as to thirty
 pounds thirteen shillings, and the matters therein contained, are
 insufficient in law to preclude him the said plaintiff from having and
 maintaining his aforesaid action to recover his full damages in respect
 of the said thirty pounds thirteen shillings, protesting also, that he
 the said plaintiff did not refuse to accept the said thirty pounds
 thirteen shillings from the said defendant, as the said defendant
 hath above in his said plea in this behalf alledged: for replication
 in this behalf he the said defendant says, that though true it is that
 the said defendant did tender and offer to pay the said thirty pounds
 thirteen shillings as he hath above acknowledged, yet the said
 plaintiff in fact further saith, that after the making the said several
 promises and undertakings in the said declaration mentioned, as
 to the said thirty pounds thirteen shillings, and before the making
 of the said tender by the said defendant as aforesaid, to wit, on the
 ninth day of July, in the year 1783, to wit, at *Hay* aforesaid, in
 the said county of Brecon, he the said plaintiff for the recovery of
 his damages by him sustained, by reason of the not performing of
 the said several promises and undertakings in the said declaration
 mentioned, sued and prosecuted out of the court of our lord the
 king, of his exchequer of pleas (the said court then and still being
 held at Westminster, in the county of Middlesex), a certain writ
 of our said lord the king called a *subpœna*, against him the said de-
 fendant, whereby our said lord the king commanded and strictly
 enjoined him the said defendant that (all excuses apart), he should
 appear before the barons of the exchequer of our lord the king, at
 Westminster, on the sixth day of November then next coming,
 to answer to our said lord the king concerning certain articles then
 and there on the behalf of our said lord the king to be objected;
 and that he should in no wise omit under the penalty of one hun-
 dred pounds, which our said lord the king would cause to be levied
 to his use upon the goods and chattels, lands and tenements of the
 said defendant, if he should neglect that our said lord the king's
 present command; which said writ of *subpœna* sued and prosecuted
 by him the said plaintiff against the said defendant as aforesaid, was
 so sued and prosecuted by him the said plaintiff with intent to im-
 plead the said defendant upon and for the several causes of action
 in the said declaration specified, and to cause him to appear in the
 said court here, and upon his said appearance to declare against
 him for the said several causes of action above-mentioned: And
 the said plaintiff according to his intention aforesaid, to wit, in
 Michaelmas term, in the twenty-fourth year of the reign of our

Replication to a
 plea of tender,
 that previous to
 the making of
 the tender,
 plaintiff sued
 out a writ of
 subpœna in the
 court of Exche-
 quer in this
 suit.

Bull. Ni. Pri.
 151.

1. Will. 141.

TENDER.—REPLICATION.

said lord the king, exhibited his aforesaid bill, and declared thereon against the said defendant in manner and form aforesaid, to wit, at *Hay* aforesaid, in the said county of Brecon, and this he the said plaintiff is ready to verify; wherefore he prays judgment and his full damages, in respect of the said thirty pounds thirteen shillings, residue of the money in the said declaration mentioned, to be adjudged to him, &c. V. LAWES.

The plea in this case seems to be demurrable to, but as the law is clearly with the plaintiff, upon the point of the subpoena having issued before the tender, he had better put such matter in issue than demur. If the precise time of issuing the subpoena be known, it might not be amiss to state it instead of the teste, merely as it might probably be the means of preventing any special matter as to such fact being rejoined; but if there be the least doubt, the replication should by all means stand as it does, as, if you vary from the teste, the time

will, I conceive, become material; as to the evidence of the defendant, should he put the *issuing* of the writ in issue, an official copy of it will, I conceive, be sufficient (a); but if the existence of the writ be put in issue, then the writ itself must be shewn, but as to the service, I do not think it material to be established, as the operation of the tender is prevented by the suing out of the writ. If, however, it can be shewn without much difficulty, it may not be amiss to come prepared with evidence of the fact.

V. LAWES.

(a) See Wood v. Lawton, 1. Will. Rep. 141. 5. Bac. Abr. 7. Cro. Car. 264.

Replication of a subsequent demand and refusal to a plea of tender.

As to the law on which this replication is founded, v. Brownl. 71. Hob. 207. 2. Roll. Abr. 427. 5. Abr. 12. Annesly 206. 2. Stra. 1027.

Exhibiting of the bill, or levying of the plaint.

WALLS } AND said plaintiff, as to the said plea of said de-
versus } fendant by him above pleaded in bar, as to first, se-
LAYTON. } cond, third, fourth, fifth, sixth, and seventh Counts of said declaration, and as to five pounds two shillings and twopence, part of the said sum of ten pounds in the 2d Count of said declaration mentioned, whereof he hath above put himself upon the country, doth the like, &c. and as to said plea of said defendant by him above pleaded, as to four pounds seventeen shillings and twopence, residue of ten pounds in the promise and undertakings in said second Count of said declaration mentioned, the said plaintiff says, that she by reason of any thing in that said plea alledged, ought not to be barred from having and maintaining her aforesaid action thereof against him said defendant, to recover more and greater damages than four pounds seventeen shillings and twopence, because protesting that said plaintiff did not refuse to accept said four pounds seventeen shillings and twopence in said plea lastly above specified, in manner and form as said defendant hath above in his said plea in that behalf alledged; nevertheless for replication in this behalf, said plaintiff says, that after the making of said tender in said plea mentioned, and before the suing forth of the original writ of said plaintiff, to wit, on the twenty-first day of March A. D. 1782 aforesaid, at, &c. aforesaid, the said plaintiff demanded of said defendant said sum of four pounds seventeen shillings and twopence, and then and there required him to pay the same to her said plaintiff, but that said defendant then and there wholly refused to pay the same, or any part thereof, to the said plaintiff, and hath from thence hitherto wholly refused, and still refuses so to do; and this she is ready to verify: where-

wherefore she prays judgment and more and greater damages than four pounds seventeen shillings and twopence, on occasion of the said promise and undertaking of said John as to said four pounds seventeen shillings and twopence, residue of said sum of ten pounds in said second Count of said declaration mentioned, to be adjudged when, &c. (or thus : and damages on occasion of the premises to a greater amount than, &c. to be adjudged to her, &c.)

V. LAWES.

And defendant saith, that said plaintiff did not demand of said defendant said pounds in manner and form as said plaintiff, in his replication aforesaid, hath above alledged ; and of this he puts himself upon the country, &c.

BARR } AND said plaintiff, as to said plea of said defendant by him above pleaded, as to the first, third, *against* } fourth, and fifth promises and undertakings in said declaration mentioned, and whereof said defendant hath above put himself upon the country, said plaintiff doth the like ; and because said defendant hath not answered said second Count of said declaration of said plaintiff, as to the finding and providing, at the special instance and request of said defendant, divers other materials and other necessary things used and applied in and about the business in said second Count mentioned, nor hath he said any thing in bar or preclusion of the action of said plaintiff as to the promise and undertaking of said defendant in said second Count mentioned, as far as the same related to the finding and providing said last-mentioned materials and things necessary, said plaintiff prays judgment and his damages by reason thereof to be adjudged to him, &c. ; whereupon it is considered, that said plaintiff do recover against said defendant his damages, by reason of the non-performance of the promise and undertaking of said defendant in said second Count of said declaration mentioned, as to the finding and providing said materials and other necessary things last-mentioned, but because it is unknown to the Court here what damages said plaintiff hath sustained by reason thereof, and because it is convenient and necessary that there be but one taxation of damages in this cause ; therefore, as to the assessment of said damages against said defendant, let all enquiry thereof cease till the trial of the other issues joined in this cause.

Unica taxatio.

And as to said plea of said defendant by him secondly above pleaded in bar, he said plaintiff saith, that by reason of any thing therein contained, he ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, to recover greater damages than ten pounds ten shillings, by reason of the not performing said promise and undertaking in said second Count of said declaration mentioned, as to the work and labour, care and diligence therein, and in the second plea mentioned,

Replication to a plea of a tender, pleaded to a quantum meruit, admitting the tender, says, that plaintiff deserved to have more than the sum intended, to wit, &c. pounds.

Award of venire.

tioned, because he saith, that though true it is that said defendant did tender and offer to pay to him said plaintiff said sum of ten pounds ten shillings in manner and form as said defendant hath above in pleading alledged: yet for replication in this behalf, he said plaintiff saith, that he reasonably deserved to have of said defendant, for the work and labour, care and diligence in said second Count mentioned, more than said sum of ten pounds ten shillings tendered as aforesaid, to wit, the sum of fifty pounds of like lawful, &c. to wit, at, &c.; and this he said plaintiff prays may be enquired of by the country; and said defendants doth the like, &c.: *therefore, as well* to try the issues above-joined as to enquire what damages said plaintiff hath sustained by the non-performance of said promise and undertaking in said second Count mentioned, as to the materials and things necessary in said second Count mentioned; let a jury, &c. &c. &c.

T. WALKER,

Plea 12.

2d Plea as to
last Count, ten-
der of fifteen
guineas.

AND the said Joseph, by T. H. his attorney, comes and defends the wrong and injury, when, &c. and as to the said promise and undertaking in the said declaration first, secondly, and thirdly mentioned, and also as to the said promise and undertaking in the said declaration last above-mentioned, says, that he did not promise and undertake in manner and form as the said William hath above complained against him; and of this he puts himself upon the country, &c. and the said W. doth the like: and as to the said promise and undertaking in the said declaration last above-mentioned, as to fifteen guineas, parcel of the said one hundred pounds therein contained, the said Joseph says, that the said William ought not to have or maintain his said action to recover any damages by reason of the non-payment of the said sum of fifteen guineas, because he says, that after the making of the said promise and undertaking in the said declaration last above-mentioned as to the said fifteen guineas, and before the day of exhibiting the bill of the said W. to wit, on the first of October A. D. 1776, at, &c. he the said Joseph tendered and offered to pay to the said W. the said fifteen guineas which the said W. then and there refused to accept from the said Joseph: And the said J. further says, that he the said Joseph, from the time of the making of the promise and undertaking in the said declaration lastly mentioned as to the said fifteen guineas, hitherto always hath been, and still is ready to pay to the said William the said fifteen guineas; and the said Joseph brings the same into court, ready to be paid to the said W. if the said W. will accept the same from the said Joseph; and this he is ready to verify: wherefore he prays judgment if the said W. ought to have his aforesaid action for recovering of damages by reason of the non-payment of the said sum of fifteen guineas against him, &c.

And

And hereupon the said W. freely accepts the said sum of fifteen guineas so brought here into court, wherefore the said William is satisfied as to the said fifteen guineas, and the said Joseph is thereof acquitted; and for trying the said issue above joined, let a jury come before our lord the king at Westminster, on the next after *the first day*, by whom, &c. who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there.

Acceptance of the fifteen guineas, and *verine* awarded to try the other issue.

AND the said M. as to the said plea of the said W. as to the said thirty-five shillings, residue in the said first promise and undertaking in the said declaration above specified and above pleaded in bar, says, that the said plea, and the matter therein contained, are not sufficient in law to preclude the said M. from having his said action against the said W. to which plea, in manner and form as the same is above pleaded, the said M. is not under any necessity nor any ways bound by the law of the land to answer; and this she is ready to verify: wherefore, for want of a sufficient plea in this behalf, she prays judgment and her damages by occasion of the premises to be adjudged to her, &c.; and for causes of demurrer in law to the same plea, the said M. according to the form of the statute in such case made and provided, shews to the court here this cause following, that is to say, for that the said W. hath not shewed or alledged in his said plea that the said M. ever refused to receive of the said W. the said thirty-five shillings, as in this case he ought to have alledged, and for that the said plea is insufficient, and wants form, &c.

Demurrer to a plea of tender, for not averring that plaintiff refused to accept the money.

Salk. 623.
2. Vent. 109.
1. Sid. 13.

AND the said plaintiff, as to the said plea of the said defendant as to the said first promise and undertaking in the said declaration mentioned, for the said twenty-four pounds above pleaded, he says, that he, by any thing by the said defendant in that plea alledged, ought not to be precluded from having his said action thereof against him the said defendant, because he says, that the said defendant did not offer to pay to the said plaintiff the said twenty-four pounds in manner and form as the said defendant hath above thereof in his said plea alledged; and this he prays may be enquired of by the country, &c.

Replication to a plea of tender, that no such tender was ever made.

LLOYD } AND the said David, by Richard Field his attorney, comes and defends the wrong and injury, at the suit of }
KAY. } when, &c. and as to all the promises in the said declaration mentioned except the third promise, and as to all the sums mentioned therein, except ten shillings and sixpence, parcel thereof, the said David says, that he did not undertake and promise in manner and form as the said Mary hath declared against him;

Plea to all the promises, except third, (for money had and received) and all the money therein except 10s. 6d. *Non assumpsit* and issue, and as to that 10s. 6d. (the deposit) to tender.

TENDER—REPLICATION.

him; and of this he puts himself upon the country; and the said Mary doth so likewise: and as to the said ten shillings and sixpence mentioned in the said third promise, the said David saith, that the said Mary ought not to recover any damages against him for the same, because he saith, that after the making of the said third promise, and before the levying of the plaint of the said Mary, to wit, on the day of in the year aforesaid, and in the parish, county, and jurisdiction aforesaid, he was ready and tendered, and offered to pay to the said Mary the said ten shillings and sixpence which the said Mary then and there refused to accept or take: And the said David saith, that from the time of the making the said third promise hitherto, he hath always been, and still is ready and willing to pay the said Mary the said ten shillings and sixpence, and brings the same here into court, ready to pay the same to the said Mary if she will accept the same; and this he the said David is ready to verify: wherefore he prays judgment, and that the said Mary may be barred from recovering any damages against him for the same, &c.: And for further plea in this behalf, by leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, as to the said supposed promises in the first and second Counts of the declaration of the said Mary above-mentioned, he the said David says, that she the said Mary ought not to have or maintain her said action therefore against him the said David, because he says, that after the supposed making of the said promises in the first and second Counts of the said declaration of the said Mary above-mentioned, and before the supposed breach thereof in the first and second Counts of the said declaration likewise mentioned, to wit, on the day of in the year aforesaid, and in the parish, county, and jurisdiction aforesaid, she the said Mary did exonerate and discharge the said David from the said supposed promises and undertakings in the said first and second Counts of the said declaration above-mentioned, and from all further performance thereof; and this the said David is ready to verify: wherefore he prays judgment if the said Mary ought to have or maintain her said action therefore against him, &c.

2d to first and second Counts, that plaintiff exonerated defendant from the performance thereof, before any other of the promises.

2. Lev. 144.

12. Mod. 538.

1. Mod. 259.

Bull. Ni. Pri.

152.

Replication.
Special demurrer to the plea of tender, for being in bar of full damages, and being made on a different day than mentioned in the third Count of the declaration, making the day material, and issue as to the exoneration mentioned in the third plea.

KAY } And as to the plea of the said David by him above
versus } pleaded in bar, as to the said ten shillings and sixpence,
LLOYD. } mentioned in the said third promise, she the said Mary says, that she ought not by reason of any thing by the said David above in that behalf in pleading alledged, to be barred from recovering her full damages against the said David for the same; because she says, that the said last-mentioned plea of the said David in manner and form as the same is above pleaded, and the matters therein contained, are not sufficient in law to bar the said Mary from recovering her damages for the same, to which said plea, in manner and form as the same is above pleaded and set forth, she the said Mary is not under any necessity, nor is she bound by law to answer; and this she is ready to verify: wherefore she prays judgment.

judgment, and her full damages by her sustained, by reason of the non-performance of the said promise and undertaking of the said David as to the said ten shillings and sixpence, parcel, &c. to be adjudged to her: and for causes in demurrer in law, she the said Mary, according to the form of the statute in such case made and provided, sets down and shews to the court here as follows, to wit, for that the said plea to the said ten shillings and sixpence, parcel of the money in the said third promise in the said declaration mentioned, is pleaded in total bar of the action of the said Mary, and of all damages whatsoever as to the said ten shillings and sixpence; whereas the matter of the said plea is no answer to the said action of the said Mary, as to the sum of ten shillings and sixpence, and can, if true, by law operate in bar of damages beyond that sum of money only, and the said plea should have been pleaded accordingly, with a prayer of judgment, whether the said Mary ought to have or maintain her said action as to the said ten shillings and sixpence, to recover any more or greater damage in that behalf than the sum of ten shillings and sixpence; and for that the said David hath in and by his said plea pleaded the tender therein mentioned, to have been made upon another and different day than the day mentioned in the said third Count of the said declaration, whereas the same should have been pleaded to have been made upon the same day as is mentioned in that Count, the circumstance of time, as to that fact, being altogether immaterial, and for that the said plea is, in various other respects, uncertain, insufficient, and informal, &c.: And as to the said plea of the said David by him lastly above pleaded in bar, as to the said promises in the first and second Counts of the said declaration mentioned, she the said Mary says, that she ought not by reason of any thing by the said David in that plea in that behalf alledged, to be precluded from having and maintaining her aforesaid action thereof against the said David; because she says, that she the said Mary did not exonerate and discharge the said David in manner and form as the said David hath above in his said last-mentioned plea in that behalf alledged; and this she the said Mary prays may be enquired of by the country, &c.

T. BARROW.

N. B. In consequence of this demurrer, defendant moved to amend on payment of costs.

T. B.

STATUTES PLEADED IN DISCHARGE.

AND the said plaintiff says, that by any thing above alledged in the said plea of the said defendant above pleaded, as to the said promise and undertaking in the first Count of the said declaration mentioned, he the said plaintiff ought not to be barred from having his aforesaid action against the said defendant, because, protesting that the said J. S. never did become a bankrupt: nevertheless, for replication in this behalf the said plaintiff says, that the said bill of exchange was really and *bona fide*, and in the usual course

Replication to a plea, that indorser of a bill was a bankrupt, that bill was *bona fide* negotiated, and plaintiff had no notice of the bankruptcy.

course of trade and dealing negotiated by the said J. S. to the said plaintiff, for a full and valuable consideration, before the said plaintiff knew, understood, or had notice that the said J. S. was a bankrupt, or in insolvent circumstances, to wit, at, &c.; without this, that the said plaintiff knew, understood, or had notice that the said J. S. had become a bankrupt, in manner and form as the said defendant hath above in that behalf alleged; and this, &c.: wherefore he prays judgment and his damages by reason of the non-performance of the said promise of the said defendant to be adjudged to him, &c.

A. PALMER.

Rejoinder, that bill was not *bona-fide* negotiated and issue on the notice.

And the said defendant, as to the said plea of the said plaintiff by him above pleaded in reply to the said plea of the said defendant by him secondly above pleaded in bar, as to the said promise and undertaking in the first Count of the said declaration mentioned, says, that the said plaintiff, by reason of any thing in his said plea so pleaded by way of reply alleged, ought not to have or maintain his aforesaid action thereof against him, because, protesting that the said J. S. did become a bankrupt, as he the said defendant has above in pleading alleged; protesting also, that the said bill of exchange in the first Count of the said declaration mentioned, was not really and *bona fide*, and in the usual course of trading and dealing, negotiated by the said J. S. to the said plaintiff, for a full and valuable consideration, before the said plaintiff knew, understood, or had notice that the said J. S. was a bankrupt, and in insolvent circumstances, as the said plaintiff hath in his said plea so pleaded by way of reply as aforesaid alleged for rejoinder in this behalf, he the said defendant says, as before, that the said plaintiff knew, understood, and had notice that the said J. S. had become a bankrupt in manner and form as the said defendant hath in that behalf alleged; and of this he puts himself upon the country, &c.

V. LAWES.

Plea to a declaration for work and labour; 1st, *Non assumpsit*; 2d, that the promises were made jointly by defendant and one A. B. who is since a bankrupt, and that plaintiff was indebted to defendant and A. B. in more money, &c.

AND the said Isaac, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said Isaac, *non assumpsit*: And for further plea in this behalf the said Isaac, by leave of, &c. *actio non*, because protesting that the said several promises and undertakings in the said declaration mentioned, if any such were made, were not made by the said Isaac alone in manner and form as the said John hath above in that behalf alleged: nevertheless, for plea in this behalf the said Isaac says, that the said several promises and undertakings in the said declaration mentioned, if any such were made, were made by the said Isaac jointly with one A. B. to wit, at, &c. in, &c.: And the said

said Isaac further says, that the said A. B. before and at the time of the commencement of this suit, was, and still is a bankrupt, within the true intent and meaning of the several statutes made and now in force concerning bankrupts; and that the said C. D. and E. F. before and at the time of the commencement of this suit, were, and still are, the assignees of the estate and effects of the said A. B. within the true intent and meaning of the several statutes made and now in force concerning bankrupts, to wit, at, &c. : And the said Isaac further says, that the said John, before and at the time of the commencement of this suit, was and still is indebted to the said Isaac and the said C. D. and E. F. assignees as aforesaid, in more money than is due and owing from the said Isaac and the said C. D. and E. F. assignees as aforesaid to the said John, upon and by virtue of the said several supposed promises and undertakings in the said declaration mentioned, to wit, in the sum of, &c. for goods sold, money lent, &c. which said sums of money so due and owing from the said John to the said Isaac and A. B. before he became a bankrupt, greatly exceed the said several sums of money so due and owing from the said John and A. B. before he became a bankrupt to the said John, upon or by reason of the said several supposed promises and undertakings in the said declaration mentioned, and which said several sums of money so due and owing from the said John to the said Isaac and A. B. before he became a bankrupt, and the said C. D. and E. F. assignees as aforesaid since the bankruptcy, or so much thereof as shall be necessary in that behalf, the said Isaac is ready and willing, and hereby offers to set-off, and will, at the trial of this cause, set-off against the monies due and owing from the said Isaac and A. B. before he became a bankrupt; and the said C. D. and E. F. assignees aforesaid, since the bankruptcy to the said John, by virtue of the said several supposed promises and undertakings in the said declaration mentioned, according to the form of the statute in that case made and provided; and this, &c. &c.

Drawn by MR. GRAHAM.

I am strongly inclined to think, that the second plea is good in point of law, though there has been no express decision upon the question, Whether, upon an action brought against one partner (who let slip the opportunity of pleading the partnership in abatement) can set

off a joint demand of the partnership against plaintiff's debt. I have met with a *dictum* of Lord Mansfield, that the joint demand could be set off, but cannot refer to it. Upon the whole, I would advise the defendant to risque the plea.

And

Replication,
taking issue on
the bankruptcy.

And the said John, as to the said plea of the said Isaac by him lastly above pleaded in bar, saith, that [*precludi non*], because protesting that the said several promises and undertakings in the said declaration mentioned were not, nor were any of them made jointly with one A. B. as the said Isaac hath in his said plea alledged; protesting also, that the said A. B. was not, before nor at the time of the commencement of this suit, nor is a bankrupt within the true intent and meaning of the several statutes made and now in force concerning bankrupts, as the said Isaac hath in his said plea alledged; protesting also, that the said C. D. and E. F. were not, nor was either of them, chosen assignees as in the said plea is above supposed: Yet for replication in this behalf the said John says, that he was not indebted to the said Isaac and C. D. and E. F. assignees aforesaid (*modo et forma*); and this he prays may be enquired of by the country.

Drawn by MR. GRAHAM.

Bankruptcy of
defendant
pleaded generally in conformity with the statute, 5 Geo. 2. cap. 30. sec. 7.

ABRAHAM'S } AND said defendant, by A. B. his attorney,
at the suit of } comes and defends the wrong and injury, when,
BRISCALL. } &c. and saith, that said plaintiff, *actio non*, because he saith, that said defendant, after the making of the said several promises and undertakings (*or recovery of the said judgment aforesaid*) in said declaration mentioned, and before the exhibiting, &c. thereupon against said defendant, to wit, on, &c. at, &c. became a bankrupt within the true intent and meaning of the several statutes made then and now in force concerning bankrupts (*a*) or some or one of them: And said defendant further saith, that the cause of action aforesaid accrued to said plaintiff before such time as said defendant became bankrupt as aforesaid, to wit, at, &c. aforesaid; and of this he puts himself upon the country, &c. (*b*).

J. MORGAN.

(*a*) In pleading that a man became a bankrupt, it is sufficient to say, that he became a bankrupt within the meaning of the several statutes, without setting forth any particular act of bankruptcy. *Vide Comb.* 108.

(*b*) That this plea must conclude to the country, See *Poole, v. Broadfield*, 1. Barnes Notes, fo. 236. *Gilb. Ca.* 328. 10. Mod. 243. For the statute intended to lay the whole proof of conformity, &c.

on the defendant, without burthening the plaintiff with the proof of any act to the contrary, which it might be difficult to establish. According to 2. Willf. 137. 139. *Paris v. Salkeld* this plea is bad, for not shewing conformity, &c. but on demurrer, for such cause in the case of *Willan v. Giordani*, the Court of B. R. in Trinity Term, 22. Geo. 3. gave judgment for the defendant, *Cooke's Bankrupt Law*, 356. and over-ruled the case in *Willan*.

Chapman

Chapman *against* Whiteside. Declaration 'at the suit of second Indorsee against the acceptor of a bill of exchange.

WHITESIDE } AND said defendant, by Thomas Holloway his
at the suit of } attorney, comes and defends the wrong and in-
CHAPMAN. } jury, when, &c. and says, &c. [*non assumpsit*];
and for further plea as to the promise and undertaking in that 1st.
Count of the said declaration mentioned, and above supposed to
have been made by said defendant, he said defendant, by leave,
&c. says, that said plaintiff, *actio non*, because he says, that after
the making of said bill of exchange in said 1st Count of said
declaration mentioned, and also after the acceptance of said bill by
him said defendant; and the making of said indorsement in said
1st Count in said declaration mentioned, and alledged to have
been made on said bill by the said Robert Johnson (the payee and
first indorser) in said first Count of said declaration mentioned,
but before the making of the said indorsement in said 1st Count of
said declaration mentioned and alledged to have been made on
said bill by said John Smith (the first indorsee) in said 1st Count
of said declaration mentioned, and whilst said bill was in the pos-
session of said John Smith, as indorsee of said Robert Johnson as
afore said, to wit, on the second day of July 1781, said J. S. became
a bankrupt within the true intent and meaning of the several sta-
tutes made and then in force concerning bankrupts, to wit, at
Westminster afore said: And said defendant in fact further saith,
that after the making of said indorsement so made by said John
Smith on said bill as afore said, and before the suing forth of the
original writ of said plaintiff, to wit, on the twenty-second of
August in the year afore said, at, &c. afore said, a certain commis-
sion of bankruptcy of our lord the now king, founded on the statutes
made and then in force concerning bankrupts, and grounded on
the afore said bankruptcy of said John Smith, at the petition of P. P.
then a creditor of said J. S. to a large amount, to wit, to an amount
exceeding one hundred pounds, in due manner made and exhib-
ited on behalf of himself, and all other the creditors of him said
J. S. and directed to H. B. J. B. and J. E. esquires, and A. P.
and J. L. gentlemen, was in due manner awarded and issued
against him said J. S. by which said commission our said lord
the king gave full power and authority to said commissioners, or any
four or three of them, to proceed according to the several statutes
made and now in force concerning bankrupts, not only concerning
said bankrupt, his body, lands, tenements, freeholds, and customary
goods, debts, and all other things whatsoever, but also concerning all
other persons, who, by concealment, claim or otherwise did or
should offend touching said promise, or any part thereof, contrary
to the true intent and meaning of the same statute, and to do
and execute all and every thing and things whatsoever, as well
for and towards satisfaction and payment of said creditors as to-
wards and for all other intents and purposes, according to the
ordinances and provisions of said statutes, as by said commission
under the great seal of Great Britain, bearing date at Westmin-
ster.

Plea, that first indorser, at the time of his indorsing the bill, was a bankrupt, and that defendant is answerable to the assignees of such bankruptcy.

fter the day and year laſt aforeſaid, and now brought into court here, more fully appears: And ſaid defendant further ſays, that ſaid H. B. A. P. and J. L. three of the commiſſioners named in the aforeſaid commiſſion by virtue of the ſaid commiſſion, and alſo by virtue of the ſtatute in ſuch caſe made and provided, for the better relief of the creditors aforeſaid, afterwards, to wit, on the fourth day of September in the year 1781 aforeſaid, at, &c. aforeſaid, by a certain indenture then and there made between them the ſaid H. B. A. P. and J. L. of the one part, and ſaid plaintiff and ſaid P. P. of the other part (which ſaid indenture, ſealed with the ſeals of the ſaid H. B. A. P. and J. L. and bearing date the day and year laſt aforeſaid, is in the cuſtody, power, and poſſeſſion of ſaid plaintiff and ſaid P. P.) in execution of the aforeſaid commiſſion, did (as much as in them ſaid commiſſioners lay, and as they lawfully might), order, bargain, ſell, aſſign, and ſet over unto ſaid plaintiff and P. P. their executors, adminiſtrators, and aſſigns, all and ſingular the goods, wares, and merchandizes, debts, ſum and ſums of money, eſtate and effects of the aforeſaid John Smith, to have, to hold, receive, and enjoy the ſame goods, wares, and merchandizes, debts, ſum and ſums of money, and all other the eſtate and effects in ſaid indenture and hereinbefore mentioned to have been ordered, bargained, ſold, aſſigned, and ſet over unto them ſaid plaintiff and P. P. their executors, adminiſtrators, and aſſigns, in truſt: Nevertheleſs, to and for the uſe, benefit, and advantage of themſelves, and all and every other the creditors of ſaid J. J. who then already had, or thereafter ſhould or might in due time come in and ſeek relief under the aforeſaid commiſſion of bankruptcy, according to the limitations and directions of the ſeveral ſtatutes made concerning bankrupts as aforeſaid: And ſaid defendant in fact further ſaith, that after ſaid J. S. became a bankrupt as aforeſaid, and before and at the time of the making of ſaid indorſement in ſaid firſt Count of ſaid declaration mentioned to have been made by him the ſaid J. S. on ſaid bill of exchange in ſaid firſt Count of ſaid declaration mentioned, ſaid plaintiff knew, underſtood, and had notice that ſaid J. S. had become and was ſuch bankrupt as aforeſaid, to wit, at Weſtminſter aforeſaid; by means whereof, and by force of the aforeſaid commiſſion of bankruptcy, and of the aforeſaid indenture of aſſignment, and the ſeveral ſtatutes in ſuch caſe made and provided, the ſaid indorſement ſo made by ſaid J. S. on ſaid bill of exchange in ſaid firſt Count of ſaid declaration mentioned, was and is wholly void, and of no force or effect whatſoever, but ſaid bill of exchange, and all the intereſt of him the ſaid J. S. therein at the time of his making ſuch ſaid indorſement thereon as aforeſaid, was and is veſted in the ſaid plaintiff and P. P. as aſſignees of the eſtate and effects of ſaid John S. ſo being ſuch bankrupt as aforeſaid under and by virtue of the aforeſaid indenture of aſſignment ſo to them made as aforeſaid; and this he ſaid defendant was and is liable, as ſuch acceptor of ſaid bill as aforeſaid, to pay to them ſaid plaintiff and P. P. as ſuch aſſignees of the eſtate

estate and effects of said John Smith, so being such bankrupt as aforesaid, the money in said bill mentioned, together with all such damages as they have sustained or may sustain on occasion of the non-payment thereof, to wit, at Westminster aforesaid; and this he the said defendant is ready to verify: wherefore he prays judgment if said plaintiff ought to have his aforesaid action as to said promise and undertaking in said first Count of the said declaration mentioned against him, &c.

V. LAWES.

See Replication and Rejoinder to a plea like this ante 185, 186.

COURTS OF CONSCIENCE.

AND the said W. by A. B. his attorney, comes, &c. *actio non*, because he says, that he the said W. before and at the time of the exhibiting, &c. lived and resided, and still doth live and reside within the city of London aforesaid: And the said W. further says, that he the said W. always, from the time of the making of the several promises and undertakings in the said declaration mentioned and above supposed to have been made by the said W. hath been and still is liable to be warned and summoned to the court of requests for the city of London, by force and virtue of the statute made in the year of the reign of, &c.: And the said W. further says, that he was not, at the time (a) of exhibiting, &c. indebted to the said C. in any sum or sums of money, amounting to the sum of forty shillings; and this, &c.; wherefore, &c. if, &c. by reason of the non-performing of the said several promises and undertakings in said declaration mentioned.

J. MORGAN.

Court of Conscience Act for London pleaded.
3. Jac. 1. c. 15.
and 14. Geo. 2. c. 10. pleaded.
Same suggested after verdict.
1. Stra. 46.
2. Stra. 274.
1120. 1191.

(a) In C. B. say before and at the time of suing out the original writ.

AND the said James, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said Joseph Moss hath above thereof complained against him; and of this he puts himself upon the country: and for further plea in this behalf the said James, by leave of the court here for this purpose first granted according to the form of the statute in such case made and provided, says, that the said Joseph Moss ought not to have or maintain his aforesaid action thereof against him, because he says, that he the said James, long before and at the time of suing out the original writ of the said Joseph Moss in this behalf, lived and resided, and still doth live and reside in the city of London aforesaid, to wit, in Bond Court, Walbrook, in the said city: And the said James further saith, that the said James, from the time of the making of the several promises and undertakings in the said declaration mentioned and above supposed to have been made

Plea of Non Assumpsit to the whole, and the jurisdiction court of requests for the city of London by rule of court.

made by the said James, hath been, and still is liable to be warned and summoned to the court of requests for the city of London: And the said James further saith, that he was not, at the time of suing out the original writ of the said Joseph Moss, indebted to the said J. M. in any sum or sums of money amounting to the sum of forty shillings; and this he is ready to verify: wherefore he prays judgment if the said J. M. ought to have or maintain his said action in this court against him, by reason of the non-performing of the said supposed promises and undertakings in the said declaration mentioned, &c.

Court of Conscience *Act* for the county of Middlesex, 23. Geo. 2. 33. pleaded.

This stat. must be pleaded. 3 D. and E. Term Reports, 452. Taylor v. Blair. See 2. Will. 42. for this case.

JESSOPONE, &c. }
at the suit of }
GARDINER. }

AND the said defendant, in his proper person, comes and defends the wrong and injury, when, &c. and as to the promise and undertaking in the said declaration last mentioned, and also as to the promise and undertaking in the said declaration first above mentioned, except as to the sum of one pound three shillings and eightpence, parcel of the said five pounds therein specified, says, that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained; and of this he puts himself upon the country, &c.: and as to the said promise and undertaking in the said declaration first above-mentioned as to one pound three shillings and eightpence, parcel of the said five pounds therein contained; the said defendant says, that the said plaintiff ought not to have his afore said action in this court against him, by reason of the not performing of the said promise and undertaking in the said declaration first above mentioned as to the said one pound three shillings and eightpence, because he says, that at the time of exhibiting, &c. and long before, he lived and resided, and still doth live and reside, within the county of Middlesex, that is to say, at Enfield in the said county of Middlesex: And the said defendant further says, that the said defendant always, from the time of the making of the promise and undertaking of the said defendant in the said declaration first above-mentioned, and supposed to have been made as to the said one pound three shillings and eightpence, parcel of the said five pounds therein contained, hitherto hath been and still is liable, to be summoned and warned to the county court of Middlesex, within the true intent and meaning of the statute made in the twenty-third year of the reign of his present Majesty, for preventing delays and expences in the proceedings in the county court of Middlesex, and for the more ready and speedy recovery of small debts in the said county court; and this, &c.; wherefore he prays judgment if the said plaintiff ought to have his said action in the said court against him, by reason of the non-performance of the said promise and undertaking in the said declaration first above mentioned as to the said one pound three shillings and eightpence, parcel of the said five pounds therein specified.

W. HAYWOOD.

GARDINER

GARDINER } AND the said plaintiff, as to the said plea of
 against } the said defendant above pleaded in bar, as to
 JESSOPONE, &c. } one pound three shillings and eightpence,
 parcel of the said five pounds in the said first promise and undertak-
 ing in the said declaration mentioned, says, that, &c. *precludi non*;
 because he says, that in and by the said act of parliament men-
 tioned in the said plea of the said defendant, it is provided, that
 no person or persons shall be liable to be summoned to the coun-
 ty court of Middlesex at the suit of any plaintiff or plaintiffs, other
 than such person or persons as was or were liable to be summoned
 to the county court of Middlesex before that act was made, and
 that that Act should not extend to give the county court jurisdic-
 tion to hold plea of, or to hear or determine any action, cause, or suit
 other than such action, &c. as the county court might have held plea
 of by plaintiff before the making of the said act, as by the said act
 (amongst other things), more fully appears: And the said plaintiff
 further says, that the said defendant, before and at the time of the
 making of the said act, was, and ever since hath been, one of the
 attornies of the court of our lord the now king of the bench here;
 and therefore the said defendant, neither at the time of the mak-
 ing of the said act, nor at the time of exhibiting of the said bill
 of the said plaintiff, was a person liable to be summoned to the
 said county court of Middlesex; and this, &c.; wherefore he prays
 judgment, and his damages in this behalf to be adjudged to him, &c.

Replication to
 the last plea,
 that defendant
 was an attorney
 of C. P. and
 therefore not lia-
 ble to be sum-
 moned to the
 county court.

W. DAVY.

To this replication the defend-
 ant demurred, and on argument the
 Court determined, that defendant, as an
 attorney, could not plead, this plea be-
 ing privileged, and not obliged to at-
 tend, in this action on a bill exhibited
 against him as an attorney, vide the
 case reported, 2. Will. 42. This doc-

trine was recognized and confirmed in
 R. T. 20. Geo. 3. Wiltshire, and one,
 &c. on motion, that said plaintiff bring
 the postea into Court, in order that de-
 fendant might enter a suggestion of this
 act. The court of B. R. concurred with
 the act of the court of Common Pleas.

RYALL } FIRST, *Non assumpsit*; and for further plea in this
 at the suit of } behalf, the said defendant, by leave, &c. says, that
 SCARPE. } the said plaintiff, *ad hoc non*; because he says, that
 the said plaintiff commenced his said action in the said court of
 our said lord the king, before the king himself (the said court
 then and still being held at Westminster in the county of Middle-
 sex), against the said defendant, after the fifth day of April A. D.
 1759, mentioned in a certain act of parliament made in the thir-
 ty-second year of the reign of George the Second, late king of
 Great Britain, &c. intituled, "An Act, &c.;" and that he the
 said defendant, at the time of the commencing the said action,
 was resident within the limits of the jurisdiction of the court of
 requests in the said first-mentioned act, to wit, in the parish of
 St. George the Martyr, in the borough of Southwark, aforesaid,
 and was subject to the process and jurisdiction of the said court of
 requests for any debt by him owing to any person not exceeding the

Plea in bar of the
 Court of Con-
 science Act for
 Southwark, 32.
 Geo. 2. c. 6.
 To explain and
 amend 22. Geo.
 2. c. 47.

Set out the title
 of the act ver-
 batim.

the sum of forty shillings, to wit, at London, &c. aforesaid: And the said defendant further saith, that he was not, at the time of the commencing the said action against him as aforesaid, indebted to the said plaintiff in any sum or sums of money amounting to the sum of forty shillings; and this, &c.; wherefore, &c. if, &c.

J. MORGAN.

Court of Conscience Act, 5. Geo. 3. ch. 8. for the hundred of Blackheath. Bromley, &c. in Kent, pleaded.

MEDHURST } AND the said defendant, by A. B. his attorney, at the suit of } comes and defends the wrong and injury, when, &c. EAIN. } and saith, that the said plaintiff ought not to have his aforesaid action thereof maintained against him the said defendant, because he saith, that at the time of the commencing the said action, he the said defendant was inhabiting and residing within the hundred of Blackheath in the county of Kent, and was liable to be warned and summoned before the court of requests for the hundred of Blackheath, of Bromley, and Bechenham of Roxeley, otherwise Roxley, and of Little and Lessness, in the county of Kent; and that the said defendant was not, at the time of the commencing the said action, indebted unto the said plaintiff in any sum or sums of money, amounting to above the sum of forty shillings; and this he the said defendant is ready to verify: wherefore he prays judgment if the said P. ought to have his aforesaid action maintained against the said defendant.

V. LAWES.

Non assumpsit infra sex annos to 1st, to 2d, 3d, and last. *Non assumpsit* generally (except as to fifteen shillings and upwards, to the whole of fourth promises the Court of Conscience Act for the Tower Hamlets.

BECMAN } FIRST, *Non assumpsit infra sex annos*, as to the at suit of } first promise; to the second, third, and last promises, PARROT. } and to the fourth promise, except fifteen shillings, *non assumpsit* generally; and to the fourth promise, and also to the fifth as to fifteen shillings, the following plea: And as to the promise and undertaking in the said declaration fourthly above mentioned; and also as to the said promise and undertaking in the said declaration fifthly above mentioned; and as to the said fifteen shillings, parcel of the said ten pounds therein contained, the said defendant says, that the said plaintiff *actio non*; because he says that by a certain act of parliament, made at a sessions of parliament holden at Westminster in the county of Middlesex, on the sixteenth of November A. D. 1749, entituled, "An Act for the more easy and speedy Recovery of small Debts within the Tower Hamlets," it was and is amongst other things enacted, "that no action or suit for any debt, not amounting to the sum of forty shillings, and recoverable by virtue of the said act in the court of requests for the Tower Hamlets, should be brought against any person residing or inhabiting within the jurisdiction thereof in any other court whatsoever," as by the said act amongst other things more fully appears: And the said defendant further says, that the damages which the said plaintiff hath sustained, as well by reason of the non-performance of the said promise and undertaking in the said declaration fourthly

fourthly above mentioned, as by reason of the non-performance of the said promise and undertaking in the said declaration fifthly above mentioned, as to the said fifteen shillings parcel of the said ten pounds therein contained, do not amount in the whole to forty shillings; and that the said defendant at the time of exhibiting, &c. and long before, was and from thence hitherto hath been and still is a person residing and inhabiting within the liberty of the Tower Hamlets aforesaid, and within the jurisdiction of the court of requests for the said Tower Hamlets, that is to say, at the parish of St. Mary, Whitechapel, in the said county of Middlesex: and the said defendant further saith, that the said defendant, at the time of exhibiting, &c. and long before, was liable to be warned and summoned by the said plaintiff before the court of requests for the said Tower Hamlets, and that said court of requests might by their judgment have compelled the said defendant to have satisfied the said plaintiff the damages which he had sustained, as well by reason of the non-performance of the said promise and undertaking in the said declaration fourthly above mentioned, as by reason of the non-performance of the said promise and undertaking fifthly above mentioned as to the said fifteen shillings, parcel of the said ten pounds therein contained; and this, &c. wherefore, &c. if, &c.

PARROT } And the said plaintiff, as to the said plea of Replication
against } the said defendant by him pleaded in bar as to the thereto, taking
BECMAN. } said promise and undertaking of the said defendant in issue on the sta-
the said declaration first above mentioned, says, that he by any tute of limita-
thing above in that plea alledged ought not to be barred from hav- tions as to the
ing his aforesaid action in that behalf maintained against the said 1st promise,
defendant; because he says that the said cause of action did accrue to and as to the
the said plaintiff within six years next before the exhibiting of the said plea of court of
bill of the said plaintiff; and this he prays may be enquired of by the conscience act,
country, and the said defendant doth the like, &c.: And as to the shewing that
said plea of the said defendant by him above pleaded in bar as to plaintiff sued
the promise and undertaking in the said declaration fourthly above defendant in B.
mentioned, and also as to the said promise and undertaking in the R. by bill of
said declaration fifthly above mentioned, as to the said fifteen shil- Middlesex; and
lings, parcel of the said ten pounds therein contained, the said that defendant
plaintiff says, that he, by any thing in that plea above alledged, appeared to the
ought not to be barred from having his aforesaid action in that be- 4th, and deny-
half maintained against the said defendant; because he says, that after ing that defend-
the making of the said promise and undertaking in the said declara- ant resided
tion fourthly above mentioned, and after the making the said pro- within the jur-
mise and undertaking in the said declaration fifthly mentioned, asisdiction of the
to the said fifteen shillings, that is to say, on the court of con-
in the year of the reign of our lord the now king, science.
he the said plaintiff, for the recovery of his damages by him sus-
tained on occasion of the not performing of the said fourth promise
and undertaking, and on occasion of the not performing of the said
fifth promise and undertaking, as to the fifteen shillings amongst
other

ther things, sued and prosecuted out of the court of our lord the now king, before the king himself (the said court then and still being held at Westminster in the county of Middlesex), a certain precept of our said lord the king, called a Bill of Middlesex, directed to the sheriff of Middlesex, by which said precept the said then sheriff of Middlesex was commanded to take the said defendant if he might be found in his bailiwick, and to keep him safely so that he might have his body before our lord the king at Westminster on next after , to answer to the said plaintiff in a plea of trespass, and that the said sheriff should then have there that precept, at which day before our lord the king at Westminster came the said plaintiff in his own person and offered himself against the said defendant in the aforesaid plea, and the said defendant did not come; and the sheriff, to wit, A. B. and C. D. then the sheriff of the said county of Middlesex, returned that the said defendant was not found in his bailiwick, therefore, as before, the sheriff was commanded to take the defendant and keep him safely, so that he might have his body before our lord the king at Westminster on next after , to answer to the said plaintiff in the said plea of trespass, the same day was given by the said court there to the said plaintiff, there and at which day before our lord the king at Westminster came the said plaintiff in his own person, and the sheriff did not send the said precept, nor had he done any thing thereupon; and the said defendant did not come, therefore &c. (as before, award two more precepts, and defendant appeared at the last); and thereupon the said plaintiff, in Trinity term, in the twenty-fourth year of the reign of our said lord the now king, exhibited his aforesaid bill in the said court of our said lord the king, before the king himself, against the said plaintiff, for the recovery, amongst other things, of his damages by him sustained on occasion of the not performing of the said fourth promise and undertaking, and on occasion of the not performing of the said fifth promise and undertaking, as to the said fifteen shillings: And the said plaintiff further saith, that the said defendant, at the time of the suing forth of the said precept first above mentioned, was not a person residing or inhabiting within the jurisdiction of the said court of requests for the said Tower Hamlets, or liable to be warned or summoned by the said plaintiff before the said court of requests for the said Tower Hamlets; and this he is ready to verify: wherefore he prays judgment and his damages, on occasion of the not performing of the said fourth promise and undertaking, and of the said fifth promise and undertaking, as to the said fifteen shillings, against the said defendant.

INSOLVENT DEBTORS' ACTS.

Duplicate as a
prisoner.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that he cannot deny

deny the said action of the said plaintiff, nor but that the said defendant did undertake and promise in manner and form as the said plaintiff hath above thereof complained against him, nor but that the said plaintiff ought to recover against him the said defendant his damages sustained on occasion of the not performing of the several promises and undertakings of him the said defendant; but the said defendant, in pursuance of a statute made at Westminster in the county of Middlesex, in the fourteenth year of the reign of our lord the now king, intituled, "An Act for the Relief of Insolvent Debtors and for the Relief of Bankrupts in certain Cases," in discharge of his person from the execution of the judgment to be obtained against him in this behalf by the said plaintiff in this action, according to the form and direction of that statute, says, that he the said defendant, on, &c. was actually a prisoner in his majesty's prison of, &c. in L. aforesaid, to wit, in the parish and ward aforesaid, at the suit of, &c. and that he the said defendant afterwards, to wit, at the general quarter sessions of the peace, was duly discharged according to and by virtue of the said statute: And the said defendant further says, that the said several causes of action in the said declaration mentioned, and each and every of them, did accrue to the said plaintiff before, &c.; and this, &c. wherefore, &c. and that his person be discharged from the execution of the judgment to be obtained against him by the said plaintiff in this action, according to the form of the said statute, &c.

J. MORGAN.

(PROCEED as above to this mark ||, then as follows): that Duplicate, as he the said defendant before the first day of January, to wit, on, having been in &c. A. D. 1775, was arrested and in actual custody of an officer custody of an belonging to the sheriff of Middlesex for one hundred pounds, at officer, and surrendered in discharge of bail, the suit of one A. B. by virtue of a certain writ of our lord the now king, called a *capias*, issuing out of the court of our lord the king of the bench at Westminster in the county of Middlesex, in a certain plea, to wit, a plea of trespass on the case upon promises, and was held to bail thereon for pounds; and that he the said defendant afterwards and before the twenty-sixth day of, &c. A. D. 1776, to wit, on, &c. did surrender himself in discharge of his bail, and was thereupon duly committed to his majesty's prison of the Fleet in London aforesaid, to wit, in the parish and ward aforesaid, at the suit of the said A. B.; and that he the said defendant afterwards, to wit, at, &c. (every thing subsequent as in preceding plea).

J. MORGAN.

COPELAND } AND the said defendant, by A. B. his at- (a) Plea, discharge of prisoner under compulsory clause of insolvent act, 1. G. 3. c. 27. s. 1.
at the suit of }
CLARK, GENT. } torney, comes and defends the wrong and injury, when, &c. and says, that he cannot deny the aforesaid action of the said John, nor but that the said writ-

(a) This plea is in debt, but by saying promise plaintiff, as in pages 196, 197, 46. Instead, the plea will do in *assumpsit*.

INSOLVENT DEBTORS' ACT.

ing-obligatory is the deed of the said W. nor but that he owes to the said John the said twenty pounds, in manner and form as the said John hath above thereof complained against him, nor but that he the said John ought to recover his aforesaid debt and his damages on occasion of the detaining of that debt against him the said W. but in pursuance of an act of parliament made at Westminster, on, &c. in the first year of the reign of, &c. intituled "An act for the relief of insolvent debtors," and in discharge of his person from the execution of his judgment, to be obtained against him in this behalf by the said plaintiff in this action, according to the form and direction of that act, says, that he the said W. on, &c. at, &c. was, and from thence continually until and at the time of his discharge hereafter mentioned, remained a prisoner in his majesty's prison in and for the county of Surry, commonly called the county goal, at Southwark, in the said county of Surry, at the suit of B. B. charged in execution at his suit for fifteen pounds debt, and sixty-three shillings damages, on a judgment recovered by the said B. B. against the said W. in the court of our lord the king, before the king himself (the said court then and still being held at Westminster, in the county of Middlesex), for the said debt and damages, and that he the said W. afterwards, to wit, at the general quarter sessions of the peace of our lord the now king, holden at K. in and for the said county of S. on, &c. before certain then justices of our lord the now king, assigned to keep the peace of our lord the now king in and for the said county of S. and also to hear, &c. committed in the said county of S. was in due manner at the request and compulsion of the said B. B. discharged according to and by virtue of the said act: and the said W. further says, that the said cause of action in the said declaration mentioned, accrued to the said John before the twenty-fifth day of, &c. to wit, at, &c.: and this, &c. wherefore he prays judgment, and that his person may be discharged from the execution of the said judgment to be obtained against him by the said John in his action, according to the form of the said act.

W. DAVY.

Plea of discharge under an insolvent act, and replication.

ACTION for goods sold and delivered, &c.; plea, 1st, *non assumpsit*, and conclude to the country; 2d, *infra sex annos*, and conclude with verification; 3d, And for further plea in this behalf, the said Henry by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that he cannot deny the aforesaid action of the said William, nor but that he the said Henry did undertake and promise in manner and form as the said William hath above thereof complained against him, nor but that he the said William ought to recover his damages, on occasion of the not performing the said several promises and undertakings aforesaid against him the said Henry, but the said Henry in pursuance of an act of parliament, made at Westminster, in the county of Middlesex, in the eighteenth year of the reign of our

18. Geo. 3. c. 52.

our lord the now king, intituled " An act for the relief of insolvent debtors, and for the relief of bankrupts in certain cases," in discharge of his person from the execution of the judgment to be obtained against him in that behalf, by the said William in this action, according to the form and direction of that act, says, that he the said Henry on the tenth day of March, in the year of Our Lord 1778, was in foreign parts beyond the seas, to wit, in Holland; and that he the said Henry at the general quarter sessions of the peace of our sovereign lord the king, held at Kingston-upon-Thames, by adjournment, in and for the county of Surry, on Tuesday the third day of November, in the year of Our Lord 1778, was duly discharged according to the said act; and the said Henry further says, that the several sums of money in the said declaration mentioned, and for which this action is brought, were contracted and due to the said William before the said tenth day of March, in the year of Our Lord 1778, to wit, at Westminster, in the county of Middlesex; and this he is ready to verify: wherefore he prays judgment, and that his person may be discharged from the execution of the judgment to be obtained against him by the said William in this action, according to the form of the said act, &c.

GEO. WOOD.

And the said William, as to the said plea of the said Henry by him first above pleaded in bar, and whereof he hath put himself upon the country, doth the like, &c. and as to the said plea of the said Henry, by him secondly above pleaded in bar, he the said William says, that he ought not by reason of any thing therein alleged, to be barred from having and maintaining his aforesaid action against him the said Henry, because he says, that he the said Henry did, within six years next before the exhibiting the bill of the said William against the said Henry, undertake and promise in manner and form as the said William hath above thereof complained against him the said Henry, and this he the said William prays may be enquired of by the country: *And* the said William, as to the said plea of the said Henry by him lastly above pleaded, in bar of execution of the debt and damages aforesaid against the person of the said Henry, says, that he ought not by reason of any thing in that plea contained, to be precluded from having and maintaining his aforesaid action against him the said Henry, because he says, that he the said Henry was not duly discharged according to the form of the said act of parliament in the said last-mentioned plea mentioned; and this he the said William prays may be enquired of by the country, &c.

Replication to
1st plea, and
issue.

to 2d issue.

to 3d issue.

WESTAL } AND the said Richard, by John Sterling, his Discharge under
at suit of } attorney, comes and defends the wrong and injury, the act of insol-
FAULKNER. } when, &c. and says, that he cannot deny the said vency as a pri-
action of the said Thomas, nor but that he the said Richard un- soner in custody.
dertook in manner and form as the said Thomas above complains
O 4
against

INSOLVENT ACT.—REPLICATION.

againſt him; nevertheless the ſaid Richard ſaith, that the ſaid Thomas ought not to have any action againſt the *perſon* of the ſaid Richard of or for any damage to be adjudged to the ſaid Thomas in this action, by reaſon of the non-performance of the ſaid promiſe in the ſaid declaration above ſuppoſed to be made, becauſe he ſaith, that the ſeveral promiſes and undertakings in the ſaid declaration mentioned, were made before the firſt day of January, in the year of Our Lord 1747, mentioned in a certain act of parliament made at a ſeſſions of parliament of our now lord the king, holden at Weſtmiſter, in the county of Middleſex, on the tenth day of November, in the, &c. intituled “An act for relief of inſolvent debtors,” and the ſaid Richard ſays, that he the ſaid Richard, on the ſaid firſt day of January, in the ſaid year, &c. was actually a priſoner in the compter in the town and borough of Southwark, in the county of Surry, at the ſuit of John Davenport; and that he the ſaid Richard afterwards, to wit, at the general quarter ſeſſions of the peace of our ſaid lord the king, held at the court-houſe on St. Margaret’s-hill, in and for the ſaid town and borough, on Wedneſday the fifth day of October, in the twenty-second year, &c. before Sir Robert Ladbroke, knight, mayor of the city of London, Sir Robert Baylis, knight, one of the aldermen of the ſaid city, and others, their fellow juſtices of our ſaid lord the king, appointed to preſerve the peace of our ſaid lord the king within the ſaid town and borough, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdeeds committed within the ſaid town and borough, was duly diſcharged according to that act; and this the ſaid Richard is ready to verify: wherefore he prays judgment if the ſaid Thomas ought to have any execution againſt the perſon of him the ſaid Richard, of or for any damages to be adjudged to the ſaid Thomas in this action, by reaſon of the non-performance of the ſaid promiſes and undertakings in the ſaid declaration mentioned, &c.

EDWARD BOOTLE.

Replication,
taking iſſue
thereon.

And the ſaid Thomas prays a day to imparl to the ſaid plea, and it is granted him by the court, and thereupon a day is given to the parties aforeſaid to come before our ſovereign lord the king, at Weſtmiſter, on Tueſday next after eight days from, &c. to wit, for the ſaid Thomas to imparl to the ſaid plea, and then to reply to the ſame as he ſhould be adviſed; at which day the ſaid parties came, by their attornies, before our ſaid ſovereign lord the king, at Weſtmiſter; and the ſaid Thomas ſays, that by any thing by the ſaid Richard above in his plea alledged, he the ſaid Thomas ought not to be barred from having execution againſt the perſon of the ſaid Richard for his damages, which he the ſaid Thomas hath ſuſtained by the non-performance of the ſeveral promiſes and undertakings of the ſaid Richard in the ſaid declaration above ſpecified; becauſe he ſays, that the ſaid Richard, on the firſt day of January, in the year, &c. was not actually a priſoner in the compter, in the town and borough of Southwark, in the
county

county of Surry, at the suit of John Davenport, in the said plea mentioned, nor was the said Richard, at the general quarter sessions of the peace of our said lord the king, held as aforesaid, discharged according to the direction of the said act in manner and form as the said Richard in and by his plea hath above alledged; and this the said Thomas prays may be enquired of by the country.

G. NARES,

GIBSON } AND the said defendant, by A. B. his attorney,
at suit of } comes and defends the wrong and injury, when, &c.
PHILPOT. } and says, that he the said plaintiff, *actio non*; because
he says, that he said defendant cannot deny but that he did undertake and promise in manner and form as the said plaintiff hath above thereof complained against him the said defendant; but the said defendant further saith, that the several causes of action in the declaration aforesaid mentioned, accrued, and each and every of them did accrue unto the said plaintiff before the sixteenth of July 1765, to wit, at London, &c. aforesaid; and the said defendant further saith, that on the first day of July 1765, mentioned in a certain act of parliament made at the parliament of our lord the king, holden at Westminster, in the county of Middlesex, on the nineteenth day of May 1761, and from thence continued by several prorogations to the tenth of January, in the fifth year of the reign of his present Majesty, entitled "An act, &c." the said plaintiff was a prisoner in his majesty's prison of and for the county of Surry, commonly called the king's-bench prison, situate at Southwark, in the county of Surry; and that he the said plaintiff, as a person within the intent and meaning of the said act, and as a person seeking relief under the said act, and as being entitled to take and receive the benefit of the said act as a prisoner in the said prison, was, at the general quarter sessions of the peace of our lord the now king, holden at Guildford, in and for the county of Surry aforesaid, on the tenth day of July A. D. 1765, aforesaid, before certain then justices of our said lord the now king, assigned to keep the peace of our lord the king in and for the county of Surry aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the said county of Surry, by force of and according to the form of the aforesaid act, discharged, and by means of such discharge the estate and effects, both real and personal, whereof the plaintiff was at the time of such his discharge seised or possessed, or to which he was in any manner whatsoever entitled, and all right of action which he had against any person whatsoever, by means of the not performing of any promise or promises whatsoever, as to the payment of any money due from any person whatsoever to the said plaintiff before the said sixteenth of July 1765, was, by force and virtue of the said act, legally vested in Francis Lawson, esquire, then and still being clerk of the peace of and for the said county of Surry, for the benefit of the creditors of the said plaintiff, as in the said act is particularly

Plea that plaintiff was discharged under an insolvent act, and his estate and right of action vested in the clerk of the peace.

ticularly mentioned with respect to prisoners seeking relief under and taking the benefit of the said act, and that by force and virtue of the said act, all right of action of the said plaintiff which he had before such his damages vested in the said F. Lawson, esquire, as such clerk of the peace of and for the said county of Surry, for the purpose aforesaid in that behalf before mentioned, and in the said act in such cases directed; and that he the said plaintiff was, on such discharge of him the said plaintiff, by force and virtue of the said act, then, to wit, on the said sixteenth of July, A. D. 1765, aforesaid, wholly divested of such right of action, to wit, at London, &c. aforesaid; and this, &c. wherefore, &c. if, &c.

Plca of a duplicate of discharge under an insolvent act, as a fugitive.

J. E. } AND the said defendant, by A. B. his attorney,
at suit of } comes and defends the wrong and injury, when, &c.
S. B. } and says, that he cannot deny the aforesaid action of the said plaintiff, but that the said defendant did undertake and promise in manner and form as the said plaintiff hath above thereof complained against him; yet that the said plaintiff ought not to have execution for any damages to be recovered in this action against or upon the person of him the said defendant, because he saith, that the said several causes of action in the said declaration mentioned, accrued, and each and every of them accrued unto the said defendant before the day of

17, mentioned in a certain act, made at a parliament of our lord the king, at Westminster, in the county of Middlesex, by prorogation on the day of 17, and in the year of the reign of our sovereign lord the now king, entitled "An act, &c." and that the said defendant was actually abroad beyond the seas in foreign parts, to wit, at, &c. in the kingdom of, &c. on the said day of 17, in the said act mentioned, as a fugitive for debt, and was a person within the intent and meaning of the said act entitled to take and receive the benefit of the said act as a fugitive; and that he the said defendant afterwards, to wit, on the day of in the year of Our Lord, returned into this kingdom, to wit, at, &c. (the county or city where the prison is to which he surrendered), and then and there, to wit, on the day and year last-mentioned, at, &c. (as before), to wit, at, &c. (the venue in the declaration), surrendered himself to the custody of the keeper of a certain prison of our lord the king, called, &c. in, &c. (the place where the prison is situate), to wit, at, &c. (the venue in the declaration); and that he the said defendant afterwards, to wit, at the general quarter sessions (as in the duplicate), of the peace of our sovereign lord the king, held at, &c. by adjournment, in and for the county (or city) of, &c. on Wednesday the day of 17, before certain then justices of our said lord the now king, assigned to keep the peace of our lord the king in and for the said county (or city) of, &c. and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the said county or city, of, &c. to wit, at, &c. (venue in declaration), was in due manner, and

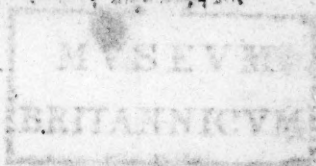
and by force and virtue, and according to the said act discharged; and this he the said defendant is ready to verify: wherefore, &c. prays judgment if the said plaintiff ought to have any execution of the damages to be adjudged to him in the behalf on or against the person of the said defendant, &c.

J. MORGAN.

STATUTE OF LIMITATIONS.

JONES, &c. EXECUTORS, } AND the said plaintiffs, execu- (a) Replication
versus } tors as aforesaid, as to the said to a plea of the
ARTHUR. } plea of the said defendant, by him statute of limi-
secondly above pleaded in bar, *precludi non*; because they say, tations, that the
that after the making of the said several promises and under- plaintiff's testa-
takings in the said declaration mentioned, the said J. J. in tor sued out a
his lifetime, to wit, on, &c. for the recovery of his damages bill of Middle-
by him sustained on occasion of the not performing the said sex, and promise
several promises and undertakings in the said declaration men- within six years
tioned, sued and prosecuted out of the court of our lord the next before the
now king, before the king himself (the said court then and suing out that
still being held at Westminster, in the county of Middlesex), precept.
a certain precept of our lord the king, called a bill of Middlesex, against the said defendant, whereby the then sheriff of Middlesex was commanded that he should take the said defendant, if he should be found in his bailiwick, and that he the said sheriff should keep him the said defendant safely, so that he might have his body before the lord the king, at Westminster, on, &c. next, &c. to answer the said J. J. in a plea of trespass, and also to a bill of the said J. J. against the said defendant for forty-four pounds, upon promises, according to the custom of the lord the king, before the king himself to be exhibited, and that the said sheriff should then have there that precept, which said precept afterwards and before the delivery thereof to the said then sheriff of Middlesex to be executed, to wit, on, &c. at, &c. he the said J. J. in his lifetime duly caused to be indorsed for bail for twenty-two pounds, according to the form of the statute in such case made and provided, and which said precept so sued, prosecuted, and indorsed as aforesaid, was so sued and prosecuted by the said J. J. out of the said court, and indorsed for bail, with intent that the said defendant might by virtue thereof be arrested, and compelled to put in special bail in the said court at the return of the said precept, at the suit of the said J. J. and that thereupon the said J. J. might, according to the custom of the said court, exhibit his bill in the said court against the said defendant, in a plea of trespass on the case, for the recovery of the damages by him sustained on occasion of the not performing the said several promises and undertakings in the said declaration mentioned; at which day of the return of the said precept, that is to say, on, &c. which

(a) See Pleas by Executors, post.



REPLICATION.—REJOINDER.

was in the fifteenth year of, &c. before our said lord the king, at Westminster, came the said J. J. by C. D. his attorney, and offered himself against the said defendant in the said plea; and the said defendant also at that day appeared in the said court here according to the tenor of the precept aforesaid, to answer to the said J. J. according to the exigency of the said writ: and thereupon the said J. J. afterwards, to wit, on, &c. exhibited his bill, and by his said attorney declared against the said defendant, in a plea of trespass on the case, on promises of and for the not performing of the same identical promises and undertakings in the aforesaid declaration mentioned, and divers proceedings were had in the plea aforesaid, and the same plea was continued depending and undetermined until the said J. J. afterwards, and before the said plea was determined, and within six years next before the day of exhibiting of the bill of the said plaintiffs, as executors as aforesaid, against the said defendant, to wit, on, &c. at, &c. died; and thereupon the proceedings aforesaid ceased and were discontinued; and the said plaintiffs, as executors as aforesaid, to wit, in Easter term, in the sixteenth year, &c. impleaded the said defendant in manner and form aforesaid: and the said plaintiff further says, that the said defendant did, within six years next before suing and prosecuting of the said precept of the said J. J. in his lifetime, against him the said defendant so sued and prosecuted as aforesaid, undertake and promise in manner and form as the said plaintiffs hath above thereof complained against him the said defendant; and this, &c. wherefore, &c. and their damages by them sustained, on occasion of the not performing the said several promises and undertakings to be adjudged to them, &c.

J. MORGAN,

(a) Replication to non assumpsit infra sex annos, that the intestate continued at sea till his death, and that within six years after his decease, plaintiffs exhibited a bill of administration.

AND the said plaintiff, as to the said plea, &c. *precludi non*; because he says, that at the respective times of making the several promises and undertakings in the said declaration mentioned, the said J. S. now deceased, was abroad in foreign parts beyond the seas, to wit, at, &c. in, &c. and the said J. S. continued and remained abroad in foreign parts beyond the seas, from thence until and at the time of his decease; and that the said plaintiff, as administrator as aforesaid, within six years next after the decease of the said J. S. to wit, in the term of, &c. now last past, exhibited his said bill against the said plaintiff, as administrator as aforesaid; and this, &c.; wherefore, &c. and his damages on occasion of the non-performing of the promises and undertakings aforesaid to be adjudged to him, &c.

J. WALLACE.

Rejoinder,

Says, that the plaintiff aforesaid did not exhibit his said bill against him said defendant within six years next after the death

(a) See *Administrators*, &c. Pleas by, post.

of

of the said J. S. as the said plaintiff hath above in his plea so pleaded by way of reply alledged; and of this he puts himself upon the country.

PRECLUDI non; because they say, at the said time when the said several causes of action in the said declaration mentioned, and each and every of them, did accrue, the said R. S. was *non compos mentis*, and so continued for a long time, to wit, until the time of his death, which happened on, &c. and that they the said plaintiffs, within six years next after the death of the said R. S. to wit, on, &c. in the tenth year of, &c. sued and prosecuted their original writ aforesaid, to wit, at, &c.; and this, &c. wherefore, &c. if, &c.

Replication to a plea of *non accrevit*, that the plaintiff's testator was *non compos mentis* for a long time before and at his death, and that the plaintiffs sued out their original writ within, &c.

NASH GROSE.

POLHILL, Esquire, Executor, &c. }
against

GODBOLD, Executor.

AND the said Edward, as to the said plea of the said Nathaniel by him above pleaded in bar, says, that he ought not to be barred from having and maintaining his aforesaid action thereof against him, because he says, that the said Nathaniel did, within six years next before the suing out of the original writ of the said Edward, undertake and promise in manner and form as the said Edward hath above thereof complained against him; and this he prays may be enquired of by the country; and the said Nathaniel doth the like, therefore, &c.

Replication, that the cause of action arose within six years.

V. LAWES.

HAMILTON }
against
DAVIS.

AND the said plaintiff, as to the said plea, &c. says, that he the said plaintiff ought not, by reason of any thing by the said defendant in that plea above alledged, to be barred from having and maintaining his aforesaid action thereof against him, because he says, that at the time when the said several causes of action in the said declaration first accrued to said plaintiff, he the said plaintiff was resident and transacting business beyond the seas, to wit, at Dublin in the kingdom of Ireland, and afterwards, to wit, on the first of January 1781, first arrived within the kingdom of England, to wit, at Westminster in the county of Middlesex: And the said plaintiff further saith, that within six years next after such his first arrival, the said plaintiff duly exhibited his said bill against the said defendant, to wit, at Westminster aforesaid, in the county of Middlesex, in the court of our said lord the king, before the king himself, the said court being then and still held at Westminster aforesaid, in the county aforesaid; and this, &c. wherefore he prays judgment and his damages on occasion of the

Replication to a plea of the stat. of limitations, that plaintiff was beyond the seas when the action accrued, and exhibited, &c. within six years after his arrival. See Smith executor, &c. v. Hill, executor, &c. 1. Wils. 134.

not



not performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him, &c.

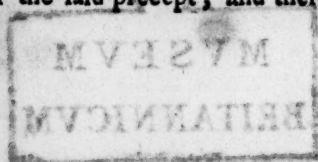
H. RUSSEL.

Replication to a plea of stat. of limitations to action at the suit of plaintiff as executors, that their testator sued for the said debt, and proceeded so far as plea and died, whereupon the action was discontinued, and that defendant promised within six years after his suit.

And as to the said plea of the said defendant by him secondly above pleaded in bar, say [*precludi non*]; because they say, that after the making of the several promises and undertakings in the said declaration mentioned, the said Jones (the testator) in his lifetime, to wit, on the twelfth of February 1775, for the recovery of his damages by him sustained on occasion of the not performing of the said several promises and undertakings in the said declaration mentioned, sued and prosecuted out of the court of our lord the now king before the king himself (the said court then and still being held at Westminster in the county of Middlesex), a certain precept of our lord the king called a bill of Middlesex, against the said defendant, whereby the then sheriff of Middlesex was commanded that he should take the said defendant if he should be found in his bailiwick; and that the said sheriff should keep him the said defendant safely, so that he might have his body before the lord the king at Westminster on Wednesday next after fifteen days from the day of Easter then next following, to answer the said J. J. in a plea of trespass, and also to a bill of the said J. J. against the said defendant for forty-four pounds upon promises, according to the custom of the court of the lord the king, before the king himself, to be exhibited: and that the said sheriff should then have there that precept; which said precept afterwards, and before the delivery thereof to the said then sheriff of, &c. to be executed, to wit, on the twenty-fifth of February 1775, at London, &c. aforesaid, he the said J. J. in his lifetime, duly caused to be indorsed for bail for twenty-two pounds, according to the form of the statute in such case made and provided, and which said precept, so sued, prosecuted, and indorsed as aforesaid, was so sued and prosecuted by the said J. J. out of the said court, and indorsed for bail, with intent that the said defendant might, by virtue thereof, be arrested and compelled to put in special bail in the said court, at the return of the said precept; and that thereupon the said J. J. might, according to the custom of the said court, exhibit his bill in the said court against the said defendant in a plea of trespass on the case, for the recovery of his damages by him sustained on occasion of the not performing of the said several promises and undertakings in the said declaration mentioned; at which day of the return of the said precept, that is to say, on Wednesday next after, &c. in Easter Term, which was in the fifteenth year of the reign of the lord the now king, before our lord the king at Westminster, came the said J. J. by Samuel Rewenferis his attorney, and offered himself against the said defendant in the said plea: And the said defendant also at that day appeared also in the said court here, according to the tenor of the precept aforesaid, to answer to the said J. J. according to the exigency of the said precept; and thereupon the said John Jones,

I

after-



afterwards, to wit, on the said Wednesday next after, &c. in Easter Term in the fifteenth year aforesaid, exhibited his bill, and by his said attorney declared against the said defendant in a plea of trespass on the case, on promises of and for the not performing of the same identical promises and undertakings in the declaration aforesaid mentioned, and divers proceedings were had in the plea aforesaid, and the same plea was continued, depending, and undetermined until the said J. J. afterwards, and before the said plea was determined, and within six years next before the exhibiting of the bill of the said plaintiffs as executors aforesaid, against the said defendant, to wit, on, &c. at, &c. aforesaid, died; and thereupon the proceedings aforesaid ceased and were discontinued; and the said plaintiffs, as executors as aforesaid, afterwards, to wit, in Easter Term in the sixteenth year of the reign of our lord the now king, impleaded the said defendant in manner and form aforesaid: And the said plaintiffs further say, that the said defendant did, within six years next before the suing out and prosecuting of the said precept by the said J. J. in his lifetime, against the said defendant, so sued and prosecuted as aforesaid, undertake and promise in manner and form as the said plaintiffs hath above thereof complained against him the said defendant; and this, &c.: wherefore they pray judgment and their damages by them sustained on occasion of the not performing of the said several promises and undertakings to be adjudged to them, &c.

J. MORGAN.

AND now at this day, that is to say, on Friday next after eight days of St. Hilary in this same term, until which day the said Edward had leave to imparl to the said bill, and then to answer the same, &c. as well the said James by his said attorney, as the said Edward by Robert Heathcote his attorney, do come before our lord the king at Westminster, and the said Edward defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said James hath above thereof complained against him; and of this he puts himself upon the country; and the said James doth the like: and for further plea in this behalf, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, the said Edward says, that the said James ought not to have or maintain his said action thereof against him, because he says, that he the said Edward did not, at any time within six years next before the exhibiting the bill of the said James, undertake and promise in manner and form as the said James hath above complained against him; and this he is ready to verify: wherefore he prays judgment if the said James ought to have or maintain his said action thereof against him, &c.

Plea of the statute of limitations *non assumption infra sex annos.*

F. BULLER.

And

Replication taking issue.

And the said James says, that he, by reason of any thing lastly above alledged by the said Edward in his said issue, he the said James ought not to be barred from having his aforesaid action thereof maintained against the said Edward, because he the said James says, that the said Edward did, within six years next before the exhibiting of the bill of him the said James, undertake and promise in manner and form as he the said James hath above thereof complained against him; and this he the said James prays may be enquired of by the country; and the said Edward doth the like: therefore, as well to try this issue as the said other issue between the said parties above joined, &c. let a jury come before our lord the king at Westminster in next after, and were, &c. and who neither to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.

Plea. First general issue. 2d, *Non assumpsit infra sex annos.* 3d, a set off for goods sold, &c.

EVANS, } AND the said James, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, &c. [General issue]; and for further plea in this behalf the said James says, by leave, &c. [*actio non*], because he says, that he the said James did not at any time within six years next, before the suing out the writ of the said John, undertake and promise in manner and form as the said plaintiff hath above thereof complained against him the said James; and this, &c. wherefore, &c. if, &c.: and for further plea in this behalf, the said James, by like leave of, &c. says [*actio non*]; because he says, that before and at the time of the suing out the writ of the said John, the said John was and still is indebted to the said James in more money than is due and owing from the said James to the said John, upon or by reason of the not performing the said several promises and undertakings in the said declaration mentioned, that is to say, in the sum of twenty pounds, for divers goods, wares, and merchandizes by the said James to the said John, at his special instance and request before that time sold and delivered, and also in the further sum of, &c. &c. (Money paid, &c. &c.) which said several sums of money so due and owing from the said John to the said James, greatly exceed the damages sustained by the said John, by reason of the non-performance of the several promises and undertakings in the said declaration mentioned, and so much of which said several sums of money so due and owing from the said John to the said James, as will be sufficient to pay and satisfy the damages sustained by the said John by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned, the said James is ready and willing, and hereby offers to set off, &c. deduct against such damages, according to the form of the statute in such case made and provided; and this, &c.: wherefore, &c.

Drawn by MR. GRAHAM.

Replication similiter to general issue, and issue on 2d and 3d pleas.

AND

AND the said Robert P. as to the said plea of the said Robert R. by him lastly above pleaded in bar, faith, that he by reason of any thing in that plea above alledged, ought not to be barred from having and maintaining his aforesaid action against him, because protesting that the said Robert P. was not nor is indebted to the said Robert R. in any sum of money whatsoever, as the said Robert Rowley hath alledged; for replication in this behalf the said Robert Payne, as to the said several sums of money in that plea mentioned above, supposed to be due from the said Robert P. to the said Robert Rowley, and which the said Robert Rowley prays may be set off, and allowed against the said several sums of money due and owing from the said Robert Rowley to the said Robert Payne, according to the form of the statute in such case lately made and provided, faith, that the said several supposed demands in that plea mentioned, did not, nor did any of them accrue to the said Robert Rowley at any time within six years next before the commencement of this suit; and this he is ready to verify: wherefore he prays judgment and his damages, by reason of the not performing of the said several promises and undertakings in the said declaration mentioned to be adjudged to him, &c.

Replication.
Actio non accre-
vit within six
years to a plea
of set off.

W. BALDWIN.

EXECUTORS AND ADMINISTRATORS. (PLEAS BY)

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c.; and as to the first, second and last Counts in the said declaration says, that he the said defendant, *non assumpsit*; and as to the third Count in the said declaration mentioned, he the said defendant says, *actio non*; because he says, that he the said T. W. the testator, in his lifetime, to wit, on, &c. by his certain writing obligatory, sealed with his seal, and to the court of our lord the king now here shewn, the date whereof is the day and year last aforesaid, and then and there made for a true and just debt, acknowledged himself to be held and firmly bound to the said defendant in the sum of ten thousand pounds of lawful, &c. to be paid to the said defendant, when he the said T. W. should be thereto afterwards requested, with a certain condition thereto subscribed, that if the said T. W. his heirs, executors, or administrators should and did, well and truly pay, or cause to be paid unto the said defendant, his executors, administrators and assigns, the full sum of five thousand pounds, of good and lawful, &c. on or before, &c. together with lawful interest for the same, then that obligation to be void, or else to remain in full force and virtue, which said writing obligatory at the time of the death of the said T. W. was in full force and effect, not satisfied, discharged, or cancelled; and at the time of the death of the said T. W. there was due to the said defendant upon the said

Debts of a superior nature pleaded by an executor in bar to a declaration in *assumpsit*.
15. Geo. 3.

writing obligatory of the said T. W. for principal and interest, the sum of five thousand and fifteen pounds ten shillings; and the said defendant further says, that the said T. W. the testator, in his lifetime, to wit, in, &c. at, &c. by his certain other writing obligatory, sealed with his seal, and to the court of, &c. the date, &c. and then and there made for, &c. acknowledged himself to be held, &c. of one thousand two hundred pounds, to be paid, &c. with a certain condition thereto subscribed, that if the said T. W. and one J. B. or either of them, their or either of their heirs, &c. should and did, well and truly pay, or cause, &c. the full sum of six hundred pounds of lawful, &c. on, &c. with lawful interest, which should become due thereon, then that obligation to be void, or else, &c. which said writing obligatory at the time of the death of the said T. W. was in full force, &c. and at the time of the death of the said T. W. there was due to the said defendant, upon the said last-mentioned writing obligatory of the said T. W. for principal and interest, the sum of six hundred and eight pounds: and the said defendant further says, that the said T. W. in his lifetime, to wit, on, &c. at, &c. made his last will and testament in writing, and thereby constituted and appointed the said defendant executor thereof, and afterwards, to wit, on, &c. there died without altering or revoking the same, after whose death the said defendant then proved the said will, and took upon himself the burthen of the execution thereof; and the said defendant further says, that he hath fully administered all and singular the goods and chattels, rights and credits which were of the said T. W. at the time of his death, which have come to the hands of the said defendant to be administered, and that he hath not any goods or chattels which were of the said T. W. at the time of his death in his hands to be administered, nor had he any on the day of exhibiting, &c. or at any time since, excepting goods, &c. to the value of forty pounds, which are not sufficient to satisfy and discharge the said writing obligatory aforesaid, or the said monies due thereon, and which he the said defendant retains in his hands towards satisfaction thereof: And this, &c. wherefore, &c. if, &c.

F. BULLER.

Plea of plene administravit, generally by defendant sued by a wrong name.

CHAMBERS, WIDOW, EXECUTRIX,
at the suit of
TARREL.

AND Expen Chambers, who is now sued by the name of Experance

Chambers, by John Jackson, her attorney, comes and defends the wrong and injury, when, &c. and says, that the said Samuel in his lifetime did not undertake and promise in manner and form as the said Patrick above thereof complains against her, and of this she puts herself upon the country, and the said Patrick doth so likewise; and the said Experance, by leave of the court here in this behalf first had and obtained, according to the form of the statute in such case lately made and provided, for further plea

faith,

saith, that the said Patrick ought not to have or maintain his said action thereof against her; because she says, that she hath fully administered all and singular the goods and chattels, which were the goods and chattels of the said Samuel at the time of his death, which have come to her hands to be administered; and that she the said Experance hath not, nor on the day of suing forth of the said original writ of the said Patrick, nor at any time since, had any goods or chattels which were the goods and chattels of the said Samuel at the time of his death in her hands to be administered; and this she is ready to verify: wherefore she prays judgment, if the said Patrick ought to have or maintain his said action thereof against her, &c.

D. POOLE.

The defendant has not pleaded this has given her, and not by her true name name in abatement. I think he must of Experance. now plead by the same which plaintiff

FIRST, that testator, *non assumpsit*. 2d. *Non assumpsit* of testator, *infra sex annos*. 3d. And for further plea in this behalf, by like leave of, &c. the said John says, that the said William, *actio non*; because he says, that the said John never was executor of the last will and testament of the said A. B. deceased, nor ever administered any of the goods and chattels which were the goods and chattels of the said A. B. at the time of his death, as executor of his said will; and this, &c. wherefore, &c.

S. LE BLANC.

Plea (to a declaration against an executor for use and occupation, and common Counts), that defendant was not executor, nor ever administered, &c.

Vide Comyn's Dig. title, Pleader, 2. D. 7.

Similiter to 1st plea. Issue on 2d. And the said William, as to the said plea of the said John, by him lastly above pleaded in bar, says, that the said William, *precludi non*; because he says, that he the said John administered divers goods and chattels which were of the said Thomas at the time of his death, as executor of his will, to wit, on, &c. at, &c. and this he prays may be enquired of by the country, &c.

Drawn by MR. GRAHAM.

Replication, that he did administer.

AND the said Ann, by A. B. her attorney, comes and defends the wrong and injury, when, &c. and says, *actio non*; because she says, that she has fully administered all and singular the goods and chattels which were of the said G. E. at the time of his death, and which have ever come to the hands of her the said Ann to be administered, except the sum of two pounds twelve shillings and sixpence, of lawful, &c.; and that she the said Ann hath not, nor at any time since, had any goods and chattels which were of the said G. E. at the time of his death in her hands to be administered, except the aforesaid sum of two pounds twelve shillings and sixpence; and this, &c. wherefore, &c. if, &c.

N. GROSE.

Plea of *plene administravit*, *præter 2l.*

(a) Plea of *set off*, of money due on a judgment recovered by the defendant against the plaintiff as administrator.

RULE
at the suit of

WILSON, ADMINISTRATOR. } *ACTIO NON*; because he tofore, that is to say, in Easter term, in the third year of the reign of our lord the now king, impleaded the said M. as administrator; and in the court of our lord the king, before Sir C. Pratt, knight, and his brethren, then his majesty's justices of the bench, at Westminster, in &c. in a plea of trespass on the case, then and there declaring by A. B. his attorney, against the said M. as administratrix as aforesaid in that plea; that whereas, &c. (here recite the declaration, and proceed thus): and afterwards, to wit, in Trinity term, in the third year aforesaid, the said M. came into the said court of our lord the king, of the bench, at, &c. by C. D. her attorney, and defended the wrong and injury, when, &c. and said, &c. (here recite the plea, which in this case was a judgment outstanding, and *plene administravit ultra, &c.*) and such proceedings were thereupon had, that afterwards, to wit, in Michaelmas term, in the fourth year of the reign of, &c. before Sir C. P. &c. then his majesty's justices, &c. the said J. by the consideration of the said court recovered, &c. (set forth the judgment), whereof the said M. as administratrix in form aforesaid, has been convicted, as by the record and proceedings thereof remaining in the said court of our said lord the king, of the bench aforesaid, at, &c. more fully appears, which said judgment still remains in its full force, strength, and effect, not in the least paid, satisfied, recovered or made void: And the said John further says, that the monies recovered by the said judgment, and now due and owing to the said J. thereon, exceed the monies due and owing from the said J. to the said M. as administratrix as aforesaid, and which the said M. hath above complained against the said J. to wit, at, &c.; and that the said John is ready and willing, and hereby offers to set off to the said M. as administratrix aforesaid, out of the damages aforesaid, so recovered in form aforesaid, all such damages as the said G. in his lifetime, or the said M. administratrix as aforesaid, have or hath sustained on occasion of the not performing the said promises and undertakings in the said declaration mentioned, according to the form of the statute in such case made and provided; and this, &c. wherefore, &c.

J. MORGAN.

(a) See Set Off, ante.

Plea, by an executrix, that the testator in his lifetime gave a bond to one A. B. which is still in force, and that she hath fully administered except 5l.

AND the said Sarah by A. B. her attorney, comes and defends the wrong and injury, when, &c. and says, *actio non*; because she says, that the said C. N. in his lifetime, to wit, on, &c. at, &c. by his certain writing obligatory, sealed with his seal, and then and there made for a true and just debt, became held and firmly bound to one R. N. S. N. and one G. G. in the sum of six hundred pounds of lawful, &c. to be paid to the said R. N. S. N. and G. G. when he the said C. N. should be thereunto afterwards requested, which said writing obligatory at the time of the death of the said C. N. was, and still is in full force and effect,

not cancelled, annulled, discharged, or satisfied; and the said defendant further saith, that she hath fully administered all and singular the goods and chattels which were of the said C. N. at the time of his death, which have come to her hands to be administered, except goods and chattels to the value of five pounds; and that she hath not, nor on the day of exhibiting the bill of the said plaintiff against her, nor ever since had any goods and chattels which were of the said C. N. at the time of his death in her hands to be administered, except goods and chattels to the value of five pounds, which is not sufficient to satisfy the said writing obligatory, and which is subject and liable to satisfy the same, and this, &c. wherefore, &c. if, &c. : And for further plea in this behalf, the said plaintiff by leave of the court, &c. according to the form of, &c. says, *actio non*; because she says, that she the said defendant hath fully administered all and singular the goods and chattels which were of the said C. N. at the time of his death, which have come to her hands to be administered, and that she hath not any goods and chattels which were of the said C. N. at the time of his death, nor had she any on the day of exhibiting the bill of the said plaintiff, nor at any time afterwards, and this, &c. wherefore, &c. if, &c. W. BALDWIN.

2d Plea.
Plea administravit.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the letters testamentary of the said J. S. in the said declaration mentioned, and they are read to him in these words, &c. &c.; which being read and heard, the said defendant saith, *actio non*; because he says, that the said diocese of Carlisle is, and at the time of the death of the said J. S. was within the province of York; and that the said J. S. at the time of his death, was an inhabitant of and commorant at the city of Carlisle in the county of Cumberland, within the diocese of the bishop of Carlisle: And the said defendant further says, that the said J. S. at the time of his death, and before, had divers goods, chattels, rights, and credits, which were in the several dioceses of the archbishop of York and the bishop of Carlisle, and within the said province of York, to wit, goods and chattels to the value of _____ pounds and upwards, within the said diocese of the bishop of Carlisle, to wit, at the city of Carlisle aforesaid, and also other goods and chattels to the value of other _____ pounds and upwards, within the diocese of the archbishop of York, to wit, at the castle of York in the county of York; by means whereof the probate of the said will of the said J. S. and the commission of the administration of the goods and chattels of the said J. S. did of right belong to the archbishop of York by the prerogative of the church of York, and not to the bishop of Carlisle or his vicar-general or official, or to any other person, save only the archbishop of York; and this, &c. : wherefore, &c. if, &c. J. YATES.

Plea of bona notabilia in an action on the case, at the suit of an executor.

Plea of *plene administravit preterea*, three pounds in money.

AND the said J. P. administrator as aforesaid, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and saith, that he hath fully administered all the goods and chattels which were of the said J. P. at the time of his death, which have ever come to the hands of the said J. P. administrator as aforesaid, to be administered, except the sum of three pounds of lawful money of Great Britain now remaining in the hands of him the said J. P. as aforesaid unadministered; and that he the said J. P. administrator as aforesaid, hath not, nor at the time of exhibiting the bill of the said plaintiff, or at any time since, had any goods and chattels which were the goods and chattels of the said S. J. P. deceased in his hands to be administered, except the aforesaid sum of three pounds, which he now brings into court here ready to be paid to the said plaintiff towards satisfaction of his damages, by reason of the non-performing of the said promises and undertakings in the said declaration mentioned by the said S. J. P. deceased; and this he the said J. P. administrator as aforesaid, is ready to verify: wherefore he prays judgment if the said plaintiff ought to have his aforesaid action maintained against him, to recover any greater or further sum of money than the aforesaid sum of three pounds, together with his costs in this behalf sustained.

V. LAWES.

Replication (to a plea of *plene administravit*) that plaintiff, after the death of testator, sued out a *latitat* against defendants, in order for them to put in common bail, that he might exhibit his bill, and that at the time of exhibiting defendants had divers goods, &c.

AND the said Joseph prays a day to imparl to the said plea, and it is granted him, &c.; and thereupon a day is given to the parties aforesaid to come before our lord the king at Westminster, next after eight days of Saint Hilary, that is to say, for the said Joseph to imparl to the said plea, and then to reply to the same, &c.; at which day, before our lord the king at Westminster, came the parties aforesaid, by their attorneys aforesaid: And the said Joseph says, that he, by reason of any thing by the said H. and J. in their said plea above alledged, *precludi non*; because he says, that he the said Joseph, for the recovery of his damages by him sustained on occasion of the not performing of the said several promises and undertakings in the said declaration mentioned after the death of the said A. C. to wit, on, &c. at, &c. sued and prosecuted out of the court of our lord the now king, before the king himself (the said court then and still being held at Westminster in the county of Middlesex), a certain writ of our said lord the king called a *latitat*, against the said H. and J. directed to the then sheriff of G. by which said writ our said lord the king commanded the said sheriff that he should take the said H. and J. by the names and descriptions of, &c. if they might be found in his bailiwick, and them safely keep, so that the said sheriff might have their bodies before our lord the king at Westminster on, &c. next after, &c. then next following, to answer to the said Joseph in a plea of trespass; and that the said sheriff should then have there that writ, as by the said writ may more fully and at large appear; which said writ so sued and prosecuted out of the said court, was so sued and prosecuted out of the said court by the

EXECUTORS, &c.—REJOINDER.

the said Joseph against the said H. and J. with an intent that the said H. and J. might each be served respectively, with a copy thereof, according to the form of the statute in such case made and provided, and be thereby compelled to file and put in common bail at the return thereof in the said court of our said lord the king, before the king himself, at the suit of the said Joseph; and that the said Joseph might, upon such their filing and putting in such their common bail, exhibit his bill against the said H. and J. as administrator of all and singular the goods, &c. which were of the said A. C. deceased at the time of his death, with the will of the said A. C. annexed, for the recovery of his damages aforesaid: And the said Joseph further says, that afterwards, to wit, on, &c. the said H. was served in due manner with a copy of the said writ; and afterwards, to wit, on, &c. the said J. was likewise served with a copy of the said writ according to the form of the statute in such case made and provided, to wit, at, &c. and then and there had notice of the said suit of the said Joseph: And the said Joseph further says, that at the return of the said writ, to wit, on, &c. next after, &c. therein mentioned, before our lord the king at Westminster, came as well the said Joseph by his said attorney, as the said H. and J. by their said attorney; and thereupon the said Joseph then and there, to wit, in and of Michaelmas term, in the twenty-first year of, &c. exhibited his bill against the said H. and J. in the said court here in manner and form aforesaid: And the said Joseph says, that the said H. and J. at the time of suing out and prosecuting the said writ of *latitat* of the said court here, and afterwards, and after the said H. and J. were served with copies thereof, and had notice of the said suit of the said Joseph as aforesaid, had divers goods and chattels which were of the said A. C. at the time of his death, in their hands, to be administered to the value of the damages aforesaid by the said Joseph above demanded, wherewith the said H. and J. might and ought to have satisfied the said Joseph his damages aforesaid, to wit, at, &c.; and this, &c.; wherefore he prays judgment and his damages, by reason of the premises to be adjudged to him, &c.

F. BOWER.

And the said H. and J. as to the said plea of the said Joseph by him above pleaded by way of reply to the said plea of the said H. and J. by them above pleaded in bar, say, that notwithstanding any thing by the said Joseph in his plea so pleaded by way of reply alledged, he the said J. ought not to have his aforesaid action thereof maintained against them, because they say, that though true it is that the said Joseph did sue and prosecute out of the said court of, &c. now here, the said writ of *latitat* in his said plea so pleaded by way of reply mentioned, and that they the said H. and J. were respectively served with a copy thereof, and had notice of the said suit of the said Joseph as the said Joseph hath above in his said plea so pleaded by way of reply alledged: yet for rejoinder in this behalf, they the said H. and J. say, that they the

Rejoinder to the
last replication,
that defendants,
at the time of
exhibiting the
bill of plaintiff,
had not any
goods, &c.

EXECUTORS

said H. and J. had not, at the time of the said suing and prosecuting of the said writ of *latitat* out of the said court here, and afterwards, and after the said H. and J. were served with copies thereof, and had notice of the said suit of the said Joseph as aforesaid, or at any or either of those times, goods and chattels which were of the said A. C. at the time of his death, in their hands, to be administered, wherewith they might or could have satisfied the said Joseph his damages aforesaid, or any part thereof, in manner and form as the said Joseph hath above in his said plea by him above pleaded by way of reply alledged; and of this they put themselves upon the country, &c.

V. LAWES.

Plea to an action at the suit of administrator *durante minoritate* of an infant, that they are not executors, and administration was obtained by fraud.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the said letters of administration here in court, and in the said declaration mentioned; and they are read to him in these words, to wit: Thomas, by Divine Providence, Archbishop of Canterbury, primate of all England and metropolitan, to our well beloved in Christ Don Pedro de Bellendo, of, &c. merchant, greeting: Whereas it has been alledged, before the right honourable Sir J. L. knight, doctor of laws, master-keeper or commissary of our prerogative court of Canterbury, lawfully constituted on the part and behalf of you the said plaintiff, that Don Joseph de E. late of the city of P. in South America, deceased, did, whilst living, and of sound mind, memory, and understanding, duly make and execute his last will and testament in writing, and did thereof nominate and appoint Donna L. de E. his wife, curatrix or guardian to A. de E. to J. de E. and M. de E. his natural and lawful children, during her widowhood only; and in case the said Donna L. de E. should celebrate a second marriage, then the said deceased, in and by his will, did declare his three children aforesaid his universal heirs to all his effects, and from thenceforth did substitute and appoint Donna M. C. widow, their grandmother, to be their tutorefs and guardian, and executrix of his said will, and afterwards departed this life; having, whilst living, and at the time of his death, goods, chattels, and credits, in divers dioceses and jurisdictions, sufficient to found the jurisdiction of our said prerogative court of Canterbury, leaving behind him the said Donna L. de E. his widow and relict, and also the said A. de E. J. de E. and M. de E. his natural and lawful children, who are now in their respective minorities; And whereas it was further alledged, that the said Donna L. de E. has since intermarried with Don J. M. B.: And whereas it was moreover alledged, that the said will of the said deceased was duly proved, deposited, and registered in the proper court of Panama aforesaid, but hath since, to wit, in the year of Our Lord 1756, been destroyed by the conflagration that happened at Panama aforesaid in the month of March in the said year, together with all the archives of the place; and that by reason of the second marriage of the said Donna L. de E. all her right to the

guar.

guardianship of the said minors, her children, ceased and expired; and that the said Donna L. M. E. widow, was, in conformity and pursuance of the directions of the said Don de E. father of the said minors, by his aforesaid will, and by virtue of a decree of the royal ordinance and tribunal of the governor of P. aforesaid, constituted and appointed guardian and curatrix of the said minors her grandchildren: And whereas it was further alledged, that all persons so constituted guardians and curators to the minors, by the royal ordinance and tribunal of the governor of P. aforesaid, have, by themselves or by their attornies, legally constituted in their stead full right to ask and demand, recover and receive of and from all persons whom it shall and may concern, all the estate, credits, and effects, belonging or in any wise appertaining to the minors to whom they are so appointed guardians and curators; and that the said plaintiff is the lawful attorney of the said Donna L. M. C. widow, the guardian of the said minors, who now reside in P. aforesaid, especially nominated and appointed by a letter or power of attorney in the Spanish language, duly authenticated as by the said letter or power of attorney, together with a faithful and authentic translation thereof shewn to our said commissary, which said authentic translation is now remaining in the said registry of our said prerogative court of Canterbury, and the affidavits of D. J. M. C. C. D. A. G. P. touching the truth of the premises before alledged, also remaining in the said registry of our said court, more fully appears: And whereas our said commissary, having duly considered the premises, did, at the petition of the proctor of the said plaintiff, decree letters of administration of all and singular the goods, chattels, and credits of the said Don J. de E. deceased, so far as may concern his effects lying and being in England, but no further or otherwise, to be committed and granted to the said plaintiff, as the lawful attorney of the said Donna L. M. C. the tutorefs and guardian substituted and appointed in and by the aforesaid will of the said J. de E. deceased, and also by virtue of a decree of the royal ordinance and tribunal of the governor of P. aforesaid to A. de E. &c. minors, the natural and lawful children of the said Don J. de E. deceased, and as such substituted universal heirs, in and by the said will, to all the effects of their said late father, until an authentic copy of the said will shall be produced and exhibited unto the registry of our prerogative court of Canterbury, for the use and benefit of the said minors, and until such time as one of them shall attain the age of twenty-one years, justice so requiring: We, being desirous that the said goods, chattels, and credits, may be well and faithfully administered, applied, and disposed of according to law, do therefore by these presents grant full power and authority to you the said plaintiff, in whose fidelity we confide, to administer and lawfully dispose of the goods and chattels of the said Don J. de E. as far as may concern his effects lying and being in England, but no farther, or otherwise to ask, demand, recover, and receive whatsoever debts and credits, which whilst living,

ing, and at the time of his death, did any wife belong to his estate, and to pay whatsoever debts the said deceased, at the time of his death, did owe, so far as such goods, chattels, and credits limited as aforesaid will thereto extend, and the law requires, you having been already sworn, well and faithfully to administer the same, and to make a true and perfect inventory of all and singular the goods, chattels, and credits of the deceased, so far as may concern his effects lying and being in England aforesaid, and to exhibit the same into the registry of our prerogative court of Canterbury, on or before the last day of June next ensuing, and also to render a just and true account thereof on or before the last day of September, which shall be in the year of Our Lord 1756; and we do, by virtue of these presents, ordain, depute, and constitute you the said plaintiff administrator of all and singular the goods, chattels, and credits, of the said Don J. de E. deceased, so far as may concern his effects lying and being in England, but no farther or otherwise, until an authentic copy of the said will shall be produced and exhibited into the registry of our said prerogative court of Canterbury for the use and benefit of the said minors, and until such time as one of them shall attain the age of twenty-one years. Given at London the sixth day of December A. D. 1768, and in the first year of our translation; which being read and heard, the said Alexander says, that he did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country; and the said plaintiff doth the like: and for further plea, by leave, &c. *actio non*; because he says, that the said letters of administration were fraudulently had and deceitfully obtained after the said A. de E. one of the children of the said J. de E. had attained his age of twenty-one years, to wit, at London aforesaid, in the parish and ward aforesaid; without this, that the said A. de E. at the time of the granting of the letters of administration aforesaid, was within the age of twenty-one years, as by the said declaration is above supposed, whereby the said letters of administration brought here into court are void and of no effect in law; and this, &c.; wherefore, &c. if, &c.: and for further plea in this behalf the said Alexander, by leave, &c. *actio non*; because he says, that the said A. de E. at the time of exhibiting the bill of the said plaintiff, was of the age of twenty-one years and upwards, and not within the age of twenty-one years, as the said plaintiff hath in his said declaration above alledged; and of this he the said defendant puts himself upon the country; and the said plaintiff doth the like, &c.

Replication, that administration was fairly obtained, and that the infants, at the time of the granting letters of administration, were within age.

And the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded in bar, says, &c. *precludi non*; because, protesting that the said plea is insufficient in law, and that the letters of administration aforesaid were fairly and duly obtained during the minority of the said several children of the above-named Don J. de E. deceased; for replication in this behalf the said plaintiff says, that the said A. de E. at the time of the

the

the granting the letters of administration aforesaid, was within the age of twenty-one years; and this the said plaintiff prays may be enquired of by the country: and the said defendant doth the like, &c.

J. YATES.

AND the said Thomas and Ann, by A. B. their attorney, come and defend the wrong and injury, when, &c. and say, that the said R. C. in his lifetime, did not undertake and promise in manner and form as the said Joseph and Richard have above thereof complained against them; and of this they put themselves upon the country, &c. And for further plea in this behalf the said Thomas and Ann Maria, by leave of the court here to them for this purpose first granted, according to the form of, &c. say, &c. *actio non*; because they say that the said Ann Maria hath fully administered all and singular the goods and chattels which were of the said R. C. at the time of his death in her hands to be administered, nor had she any on the day of exhibiting the bill of the said Joseph and Richard, nor at any time afterwards; and this, &c.; wherefore, &c. if, &c. And for further plea in this behalf the said Thomas and Ann, by leave, &c. according, &c. say, (*actio non*); because they say that the said R. C. in his lifetime was indebted to the said Ann before her inter-marriage with the said Thomas in the sum of two hundred and fifty pounds of lawful, &c. for so much money by the said Ann before that time lent and advanced to the said R. C. and for money by the said Ann before that time paid, laid out, and expended to and for the use of the said R. C. at his special instance and request, and which said sum of two hundred and fifty pounds, at the time of the death of the said R. C. remained due and owing and is yet due and owing to the said Thomas and Ann: And the said Thomas and Ann further say, that after the death of the said R. C. divers goods and chattels which belonged to the said R. C. of the value of twenty pounds, came to the hands of the said Ann, to wit, at, &c. which said goods and chattels the said Thomas and Ann have retained in their hands in part satisfaction of the said two hundred and fifty pounds, and that the said Ann, on the day of exhibiting the bill of the said J. and R. or before, or ever after, had not any other goods and chattels which belonged to the said R. C. at the time of his death, come to her hands to be administered, except the said goods and chattels to the value of the said twenty pounds, which are not sufficient to satisfy the same; and this, &c.; wherefore, &c.

W. BALDWIN.

SHAW, EXECUTOR, &c. } AND the said John Shaw, Plea, 1st, general issue, that neither defendant's, testator, nor he promised.
at the suit of } by A. B. his attorney, comes
RAWLINSON AND ANOTHER. } and defends the wrong and injury, when, &c. and says, that the said G. W. in his lifetime, and the said John Shaw, since his decease, did not, nor did either of them undertake and promise in manner and form as the said
A. R.

EXECUTORS, &c.—REPLICATION.

2d, As to all the Counts of the declaration, except the last, that testator appointed one of the plaintiffs and two others joint executors with defendant, and concludes in bar.

3d, As to the last Count, that if any promise was made, it was made jointly.

A. R. and J. R. hath above thereof complained against him; and of this he puts himself upon the country, &c. And for further plea in this behalf, as to all the Counts except the last, he the said John Shaw, by leave of the court here to him for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said A. R. and J. R. (*actio non*); because he says that the said G. W. the testator, in his lifetime, to wit, on, &c. to wit, at, &c. duly made and published his last will and testament in writing, and thereof constituted and appointed the said John Shaw and the said J. R. one T. B. T. B. and J. M. joint executors, and soon afterwards died, without altering or revoking his said will; and this, &c. wherefore, &c. if, &c. as to the said several promises and undertakings in the said declaration mentioned, except the last. And for further plea as to the said last Count of the said declaration, he the said John Shaw, by like leave of, &c. according to, &c. says (*actio non*); because he says, that the said promise and undertaking in the said last Count mentioned (if any such was made), was made by the said John Shaw, together with the said J. R. T. B. T. B. and J. M. jointly, and not by the said J. S. separately from and without the said J. R. T. B. T. B. and J. M. to wit, at, &c.; and this, &c.; wherefore, &c. if, &c.

V. LAWES,

Replication to the 1st plea, *similiter*.
To the 2d plea, that J. R. never proved the will, nor administered.

To the 3d plea, taking issue on it.

And as to the said plea of the said John Shaw by him first above pleaded in bar, and whereof he hath put himself upon the country, the said A. R. and J. R. doth the like. And the said A. R. and J. R. as to the said plea of the said J. S. by him secondly above pleaded in bar, say, that they the said A. R. and J. R. by reason of any thing by the said J. S. in that plea above alledged ought not to be barred from having or maintaining their aforesaid action against him; because, protesting that the same plea of the said J. S. in form aforesaid above pleaded, and the matters therein contained, are not sufficient in law to bar them the said A. R. and J. R. from having and maintaining their said action thereof against him; nevertheless, for a replication in this behalf the said A. R. and J. R. say, that the said J. S. never proved the said last will and testament of the said G. W. nor took upon himself the burthen of the execution thereof, or in any manner whatsoever accepted of the said supposed appointment of him the said J. S. to be an executor of the said will, nor ever administered any goods and chattels which were of the said G. W. deceased, at the time of his death, as executor of the last will and testament of the said G. W.; and this, &c.; wherefore, &c. and their damages by reason of the not performing the said several promises and undertakings in the said declaration mentioned to be adjudged to them, &c. And the said A. R. and J. R. as to the said plea of the said J. S. by him lastly above pleaded in bar as to the said last Count of the said Declaration, say, that they, by reason of any thing in the same plea above alledged, ought not to be barred from having and maintaining their said

said action thereof against the said J. S. ; because they say that the said promise and undertaking in the said last Count mentioned, was not made by the said J. S. together with the said J. R. T. B. T. B. and J. M. in manner and form as by the same plea is above alledged; and this the said A. R. and J. R. pray may be enquired of by the country; and the said J. S. doth the like.

G. S. HOLROYD.

And as to the said plea of the said A. R. and J. R. by them above in reply pleaded to the said plea of the said J. S. by him secondly above pleaded in bar, he the said J. S. says, that the said plea so in reply pleaded, and the matters therein contained, are not sufficient in law for the said A. R. and J. R. to have or maintain their said action against the said J. S. to which said plea so in reply pleaded in manner and form as the same is above made and pleaded, he the said J. S. hath no need, nor is he bound by the law of the land to answer; and this, &c.; wherefore for want of a sufficient replication in this behalf the said J. S. prays judgment, and that the said A. R. and J. R. may be barred from having and maintaining their said action thereof against him, &c.

Rejoinder, de-
murring gene-
rally to replica-
tion to 2d plea,
and *similiter* to
the replication
to the 3d plea.

V. LAWES.

EDMONSON, ADMINISTRATOR,
at the suit of
HARRISON.

AND the said Alfred, the now defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said A. E. deceased, in his lifetime, did not undertake and promise in manner and form as the said Daniel hath above thereof complained against him; and of this he puts himself upon the country; and the said plaintiff doth the like, &c.: And for further plea in this behalf, the said defendant by leave of, &c. according to, &c. says (*actio non*); because he says that the said A. E. now deceased, in his lifetime, to wit, on, &c. at, &c. by his certain writing-obligatory, sealed with his seal, and as his deed delivered for a just and true debt, became held and firmly bound to one R. L. and one J. D. in the sum of four hundred pounds, to be paid to the said R. L. and J. D. when the said A. E. now deceased, should be thereunto afterwards requested, which said writing-obligatory, at the time of the death of the said A. E. now deceased, was and still remains in full force, unpaid and uncanceled: And the said Alfred, the now defendant, further says, he has fully administered all and singular the goods and chattels which were of the said A. E. now deceased, at the time of his death in his hands to be administered, except goods and chattels to the value of five pounds, to wit, at, &c.; and that he hath not, nor at the time of exhibiting the bill aforesaid of the said Daniel, nor at any time since, had any goods and chattels which were of the said A. E. now deceased, at the time of his death in his hands to be administered, except the said goods and chattels to the value of five pounds, and which are

Plea, 1st, Tes-
tator non-assump-
sit and *similiter*;
2d, a bond-debt
outstanding, and
*plene administra-
vit præter* gl.
which are liable
to that debt,
and not suf-
ficient to satisfy
it.

not

EXECUTORS, &c.—REPLICATION.

3d Plea, *plene*
administravit
generally.

not sufficient to satisfy the debt aforesaid, and which are subject and liable to the satisfaction thereof; and this, &c.; wherefore, &c. if, &c.: And for further plea in this behalf, the said A. E. the now defendant, by like leave of, &c. according to, &c. says (*actio non*); because he says that he has fully administered all and singular the goods and chattels which were of the said A. E. now deceased, at the time of his death, which have ever come to or been in his hands to be administered; to wit, at, &c.; and that the said Alfred, the now defendant, hath not, nor had he at the time of exhibiting the bill of the said Daniel, nor hath he at any time since any goods and chattels which were of the said A. E. now deceased, at the time of his death, in the hands of him the said Alfred, the now defendant, to be administered; and this, &c.; wherefore, &c. if, &c.

W. BALDWIN.

Replication to
the 2d plea,
taking judg-
ment of assets in
futuro, with stay
of proceedings
till trial of the
issues.

And the said Daniel, as to the said plea of the said Alfred, the now defendant, by him secondly above pleaded, inasmuch as the said Daniel cannot deny the several matters therein mentioned, but admits the same to be true, prays judgment and his damages by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned to be adjudged to him, to be levied of the goods and chattels which were of the said A. E. deceased, at the time of his death, and which, after satisfying the debt in the said second plea mentioned, shall hereafter come to the hands of the said Alfred, the now defendant, to be administered; therefore it is considered that the said Daniel do recover against the said Alfred, the now defendant his damages to be levied in form aforesaid; but because it is convenient and necessary that there be but one taxation of damages in this suit, and because it is uncertain whether or not the said Alfred, the now defendant, will be convicted upon the said pleas by him firstly and lastly above pleaded; therefore let all further proceedings upon the said plea of the said Alfred, the now defendant, by him secondly above pleaded, be stayed until the determination of the said

Unica taxatio.

To 3d plea of
plene administra-
vit, taking issue
on it.

other pleas by him firstly and lastly above pleaded. And as to the said plea of the said A. E. the now defendant, by him lastly above pleaded, the said Daniel saith, that he, by reason of any thing by the said Alfred, the now defendant, in that plea above alledged, ought not to be barred from having and maintaining his aforesaid action thereof against him; because he says that the said Alfred, the now defendant, hath and at the time of the exhibiting the said bill of the said Daniel, had divers goods and chattels which were of the said Alfred, deceased, at the time of his death, in the hands of him the said Alfred, the now defendant, to be administered, to wit, at, &c.; and this he the said Daniel prays may be enquired of by the country; and the said Alfred, the now defendant, doth the like; therefore, as well to try this issue as the said other issue above joined between the said parties, let a jury come before our lord the king at Westminster, on, &c. by whom, &c. who
neither

neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.

GREEN

at the suit of

WARREN, ADMINISTRATRIX, &c. } AND the said Robert, by James Garth his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said Margaret, administratrix as aforesaid, hath above thereof complained against him; and of this he puts himself upon the country, &c.; and the said Margaret, administratrix as aforesaid, doth the like, &c.: And for further plea in this behalf, the said Robert, by leave, &c. (*actio non*); because he says that he the said Robert, since the fourteenth day of May, which was in the year of Our Lord 1729, to wit, on the seventeenth day of January, in the year of Our Lord 1778, to wit, at Manchester in the said county of Lancaster, became a bankrupt within the several statutes made against bankrupts: And the said Robert, according to the form of the statute in such case made and provided, further pleads and says, that the several causes of action, in the declaration aforesaid above specified respectively accrued before the said time that he the said Robert so as aforesaid became a bankrupt; and of this he the said Robert puts himself upon the country, &c.; and the said Margaret, administratrix aforesaid, doth the like, &c.: And for further plea in this behalf, the said Robert, by leave of the court here to him for this purpose first granted according to the form of the statute in such case made and provided, says, (*actio non*); because he says that he the said Robert did not at any time within six years before the exhibiting the bill of the said Margaret, administratrix as aforesaid, undertake and promise in manner and form as the said Margaret hath above thereof complained against him; and this he the said Robert is ready to verify; wherefore he prays judgment if the said Margaret, administratrix as aforesaid, ought to have or maintain her aforesaid action thereof against him, &c.: And for further plea in this behalf, by like leave, &c. (*actio non*); because he says that the said Samuel, in his lifetime, and at the time of his death, was indebted to him the said Robert in more money than is owing from him the said Robert to the said Margaret, administratrix as aforesaid, and by virtue of the several promises and undertakings in the first, second, third, and fourth Counts of the said declaration mentioned, that is to say, in the sum of five hundred pounds of, &c. for, &c. and which said several sums of money last-mentioned, so due and owing from the said Samuel, in his lifetime, to the said plaintiff, are still due and owing and unpaid to the said Robert; and also that the said Margaret, administratrix as aforesaid, before and at the time of exhibiting the bill of the said Margaret, was and still is indebted to the said Robert in more money than is due and owing from the said Robert to the said Margaret, administratrix as aforesaid, by virtue

Plea to action of *assumpsit*, by an administratrix; 1st, *non-assumpsit* and issue; 2d, *bankruptcy* in defendant after the causes of action accrued, and issue.

3d Plea, *non-assumpsit infra sex annos*.

4th Plea, to 1st, 2d, 3d, and 4th Counts *set off*, money due from testator; and to 5th, 6th, 7th, and 8th Counts of money due to defendant as administratrix.

of

EXECUTORS, &c.—REPLICATIONS.

of the promises and undertakings in the fifth, sixth, seventh, and last Counts of the said declaration mentioned, that is to say, in the sum of five hundred pounds of like lawful money, for, &c. which said several and respective sums of money, or so much thereof as shall be necessary in this behalf, the said Robert hath been ready and willing to set off and now sets off against any demands due and owing to the said Margaret, as administratrix as aforesaid, by virtue of the several promises and undertakings in the said several Counts of the said declaration mentioned, according to the form of the statute in such case made and provided; and this he the said Robert is ready to verify: wherefore he prays judgment if the said Margaret, administratrix as aforesaid, ought to have or maintain her aforesaid action thereof against him, &c.

WILLIAM MANLEY.

Replication to
3d plea, that de-
fendant did pro-
mise within six
years, and issue.

WARREN, ADMINISTRATRIX,
against
GREEN.

} And the said Margaret, as
to the said plea of the said
plea of the said Robert by him

Replication to
4th plea, nil de-
bet and issue.

thirdly above pleaded in bar, says, that by reason of any thing by the said Robert in that plea alledged, she the said Margaret; administratrix as aforesaid, ought not to be barred from having or maintaining her aforesaid action thereof against him the said Robert; because she says that he the said Robert did, within six years next before the day of exhibiting the bill of the said Margaret, administratrix as aforesaid, undertake and promise in manner and form as the said Margaret, administratrix as aforesaid, hath above thereof complained against him the said Robert, to wit, at Manchester aforesaid, in the county of Lancaster; and this she the said Margaret prays may be enquired of by the country; and the said Robert doth the like, &c.: And as to the said plea of the said Robert by him lastly above pleaded in bar she the said Margaret, administratrix as aforesaid, says, that she, by reason of any thing by the said Robert in that plea alledged, ought not to be barred from having and maintaining her aforesaid action thereof against him the said Robert; because he says that neither the said Samuel, in his lifetime, nor she the said Margaret, after his death, as such administratrix as aforesaid, were indebted to the said Robert in manner and form as the said Robert hath above in his said last-mentioned plea alledged; and this she prays may be enquired of by the country; and the said Robert doth the like, &c.

THOMAS BARROW.

Replication of
Michaelmas
Term to plea of
plene administra-
tis of Hilary,
protesting that
after the last continuance of plea,
such replication:

AND the said Christopher, as to the said plea of the said Ann by her lastly above pleaded, says, that the said Christopher ought not by reason of any thing therein contained to be precluded from having and maintaining his aforesaid action thereof against her; because he says that this action was last continued from the * day of

* The day of putting in the plea, if in term; if not, the last day of Hilary.

in Hilary term last past, on which day the said last-mentioned plea was pleaded; and that though true it is that the said Ann, at the said time of pleading the said last-mentioned plea, had not any goods or chattels which were of the said Thomas Jones deceased, at the time of his death, in her hands to be administered, for replication in this behalf the said Christopher says, that after the said day of , from which day the said action was last continued as aforesaid, and before this day, to wit, on the day of , to wit, at London aforesaid, in the parish and ward aforesaid, divers goods and chattels which were of the said Thomas Jones deceased, at the time of his death, of a large value, to wit, of the value of pounds, came to the hands of the said Ann as administratrix as aforesaid, to be administered; and this he the said Christopher is ready to verify: wherefore he prays judgment and his debt aforesaid, together with his damages by him sustained on occasion of the detaining the said debt, to be levied *as to the value of the said last-mentioned goods and chattels, part thereof of the said goods and chattels which came to the hands and possession of the said Ann, as such administratrix as aforesaid; and as to the residue thereof to be levied of the goods and chattels which were of the said Thomas Jones deceased, and which hereafter shall come to the hands of the said Ann, as such administratrix as aforesaid, to be administered.* If they are insufficient to pay.

THOMAS BARROW.

I have considered the case with much attention, and have had considerable doubts respecting the proper step to be taken. Three questions arise, Whether to take judgment of assets *quando acciderunt*, or to reply *puis darrein continuance* that assets have come to defendant's hands since plea pleaded, or to move the court to enter a judgment (that is to say, of the term in which the plea was put in) *pro nunc*? on a supposition that judgments of assets in future would only attach upon assets which hereafter come to defendant's hands to be administered (as is the language of the modern form of such judgment); or for a special judgment of assets which have come to defendant's hands since the plea pleaded, as far as they will extend to satisfy, and for the residue out of future assets *quando acciderunt*. As to the first a considerable question arises in my mind, Whether a general judgment of assets *quando acciderunt* (admitting the plea), would reach the intermediate assets ac-

crued between the plea and the judgment; for such judgment is generally understood to relate or apply to assets accruing *after the judgment*. As to the second question, a special replication to the effect suggested has all the appearance of sufficiency to answer the purpose, but I fear it is unprecedented, and therefore, perhaps, not to be preferred: But if the end is not to be answered by either of these, the three methods, though in reality experimental, must, in the result of that experiment, succeed and answer every purpose; for, in discussing the propriety of it, the court must necessarily discuss the point of law, how the assets in question are to be got at? and that must eventually ascertain the proper remedy to be adopted. In short, it appears to me to be a new case, and therefore, perhaps, an application to the court would be the most eligible, because the safest mode of redress to be adopted.

THOMAS BARROW.

AND the said Jane, by John Jones, her attorney, comes and defends the wrong and injury, when, &c. and says, that the said Plea, 1st, *non-assumpsit* by testator; 2d, let off; 3d, *plene administravit*; 4th, outstanding debts on JUDGMENT RECOVERED, and on COVE-

NANTS for the payment of ANNUITIES, with *plene administravit prater*.

Thomas Howell, deceased, did not undertake or promise in manner and form as the said Richard hath above thereof complained against her, and of this she puts herself upon the country, &c. and for further plea in this behalf, she the said Jane, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said Richard ought not to have or maintain his aforesaid action thereof against her; because she says, that the said Richard in the lifetime and at the time of the death of the said Thomas Howell, to wit, at London aforesaid, in the parish and ward aforesaid, was indebted to the said Thomas Howell in a much larger sum of money than the money so due and owing from the said Jane, as such administratrix as aforesaid to the said Richard, and whereof the said Richard hath above thereof complained against her the said Jane, to wit, in the sum of six hundred pounds of lawful money of Great Britain, for money by the said Richard before that time had and received to and for the use of the said Thomas Howell, and for other money by the said Thomas Howell before that time lent and advanced to the said Richard, and at his like special instance and request; and for other money by the said Thomas Howell before that time lent and advanced to the said Richard at his like special instance and request, and for other money before that time due and owing from the said Richard to the said Thomas Howell, upon an account stated between them the said Richard and the said Thomas Howell, which said sum of money so due and owing from the said Richard to the said Thomas Howell as aforesaid, at the time of the exhibiting of the bill of the said Richard against the said Jane, remained and was and from thence hitherto hath been, and still is due and owing from the said Robert to the said Jane, as such administratrix as aforesaid, and which she the said Jane, as such administratrix aforesaid, is ready and willing, and here offers to set off and allow to the said Richard the said money so from him due and owing as aforesaid, or so much thereof as the damages sustained by the said Richard on occasion of the not performing of the said several promises and undertakings in the said declaration mentioned amount to, according to the form of the statute in such case made and provided; and this she the said Jane is ready to verify: wherefore she prays judgment if the said Richard ought to have or maintain his aforesaid action thereof against her, &c.:

Plene administratrix. And for further plea in this behalf, she the said Jane, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said Richard ought not to have or maintain his aforesaid action thereof against her, because she says, that she the said Jane hath fully administered all and singular the goods and chattels which were of the said Thomas Howell, deceased, at the time of his death, and which have ever come to her hands to be administered, to wit, at London aforesaid, in the parish and ward aforesaid, and that she the said Jane hath not, nor on the day of exhibiting the bill of the said Richard, or at any time afterwards, had

had she any goods and chattels which were of the said Thomas Howell, deceased, at the time of his death in the hands of her the said Jane to be administered, wherewith she could or might have paid or satisfied the said Richard his damages on occasion of the non-performance of the said several promises and undertakings in the said declaration mentioned; and this she the said Jane is ready to verify: wherefore she prays judgment if the said Richard ought to have or maintain his aforesaid action thereof against her, &c. And for further plea in this behalf, she the said Jane, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said Richard ought not to have or maintain his aforesaid action thereof against her, because she says, that one Thomas Walter, since the death of the said Thomas Howell, deceased, to wit, on the sixth day of March, in the year of Our Lord 1790, in the court of great sessions, held at Cardiff, in and for the county of Glamorgan, before George Hardinge, and Abel Moysey, esquires, justices of the great session for the said county, by the consideration and judgment of that court recovered against the said Jane, as executrix of the last will and testament of the said Thomas Howell, deceased, as well a certain debt of two hundred and ten pounds ten shillings, as also ninety shillings, which in and by the said court were then and there adjudged to the said Thomas Walter for his damages which he had sustained, as well on occasion of the detaining of that debt, as for his costs and charges, by him about his suit in that behalf expended, to be levied of the goods and chattels which were of the said Thomas Howell deceased, if she the said Jane had so much thereof in her hands to be administered; and if she the said Jane had not so much thereof in her hands to be administered, then the said ninety shillings, the damages aforesaid, to be levied of the proper goods and chattels of the said Jane, whereof the said Jane was convicted, as by the record and proceedings remaining in the said court of great sessions at Cardiff aforesaid, in the county of Glamorgan, more fully and at large appears, which said judgment so had and obtained as aforesaid, was so had and obtained for a true and just debt, really and truly due and owing from the said Thomas Howell in his lifetime at the time of his death unto the said Thomas Walter, and at the time of the recovery of the said judgment in arrears and unpaid; and which said judgment still remains in its full force, strength, and effect, except as to the sum of one hundred pounds, parcel of the said debt and damages so thereby recovered: And the said Jane further says, that one Hopkin Llewellyn, heretofore and since the death of the said Thomas Howell deceased, to wit, on the said twenty-sixth day of March, in the year of Our Lord 1790, in the court of our lord the king of great sessions held at Cardiff, in and for the county of Glamorgan, before the said George Hardinge and Abel Moysey, esquires, justices of the great sessions of the said county, by the consideration and judgment of that court recovered against the said Jane, as executrix of the last will

will and testament of the said Thomas Howell deceased, as well a certain debt of twenty-three pounds eight shillings and sixpence, as also ninety shillings, which in and by the said court were then and there adjudged to the said Hopkin Llewellyn for his damages which he had sustained, as well on occasion of the detaining of that debt, as for his cost and charges by him about his suit in that behalf expended, to be levied of the goods and chattels which were of the said Thomas Howell deceased, if she the said Jane had so much thereof in her hands to be administered; and if she had not so much thereof in her hands to be administered, the said ninety shillings to be levied of the proper goods and chattels of the said Jane, whereof the said Jane was convicted, as by the record and proceedings thereof remaining in the said court of great sessions at Cardiff aforesaid, in the said county of Glamorgan, more fully and at large appears; which said last judgment so had and obtained as aforesaid, was so had and obtained for a just and true debt, really and truly due and owing from the said Thomas Howell in his lifetime and at the time of his death to the said Hopkin Llewellyn, and at the time of the recovery of the said last-mentioned judgment in arrear and unpaid, which said last-mentioned judgment still remains in its full force strength, and effect, not reversed or annulled, paid off, or satisfied: And the said Jane, as administratrix, in fact further says, that by a certain indenture, of four parts, made the seventeenth day of October, in the year of Our Lord 1786, to wit, at London aforesaid, in the parish and ward aforesaid, between one Herbert Lloyd and one Thomas Williams, by their several names and additions therein mentioned, of the first part; the said Thomas Howell, by his name and additions therein mentioned, of the second part; one Walter Rice Howell, since deceased, by his name and addition therein also mentioned, of the fourth part; one part of which said indenture, sealed with the seal of the said Thomas Howell, is now in the possession of Walter Powell, executor of the last will and testament of the said W. R. H.; so that she the said Jane cannot bring the same into court here, the said Thomas Howell, for certain good and valid considerations therein mentioned, for himself, his heirs, executors, and administrators, and for each and every of them, did covenant, promise, grant, and agree to, and with the said Walter Rice Howell, and his assigns, and to and with every of them, in manner and form following, that is to say, that he the said Thomas Howell, his heirs, executors, administrators, and assigns, should and would yearly and every year, during the term of the natural life of the said Walter Rice Howell, if the said Thomas Howell should so long live, on the twenty-ninth day of September yearly, well and truly pay, or cause to be paid unto him the said Walter Rice Howell, or his assigns, the clear yearly annuity or sum of twenty-seven pounds fifteen shillings, clear of all deductions, payments, or taxes whatsoever, the first payment thereof to commence and be made on the twenty-ninth day of September next ensuing the day of the date of the said indenture:

And

And the said Jane further says, that after reciting amongst other things in the said indenture, that whereas one Mary Evans, in the said indenture mentioned, in and by her last will and testament in writing, bearing date on or about the fourth day of April, in the year of Our Lord 1781, amongst other things, did give and bequeath unto the said Walter Rice Howell, and one Thomas Lewis, clerk, since deceased, their executors and administrators, the sum of four hundred pounds, which she directed to be paid to them within one year after her decease, by her executor hereafter named, in trust, that they the said Walter Rice Howell, and Thomas Lewis, or the survivor of them, or the executors or administrators of such survivor should lay out the same in real and other good security, until Janetta Iltida Howell, and Maria Elizabeth Howell, daughters of the said Thomas Howell, by her niece Jane Howell, or one of them should attain her age of twenty-one years, or be married, and when the said Janetta Iltida Howell should attain her age of twenty-one years, or be married, should pay the sum of three hundred pounds, part of the said four hundred pounds, to the said J. I. Howell, her executrix, administratrix, and assigns; and when the said M. E. Howell should attain her age of twenty-one years, or be married, should pay the sum of one hundred pounds, the remainder of the said sum of four hundred pounds, to her the said M. E. Howell, her executors, administrators, and assigns, and in the mean time should pay and apply the interest and produce of the said several sums of three hundred pounds and one hundred pounds severally bequeathed to the said J. I. Howell, and M. E. Howell as aforesaid; and that whereas the said Thomas Lewis was since dead before calling in the said four hundred pounds and placing the same out at interest, in pursuance of the directions given in and by the said will, leaving him the said Walter Rice Howell him surviving, and that the said J. I. Howell, and M. E. Howell, at the time of the making the said indenture, were infants, and unmarried; and that whereas the said Thomas Howell, their father, who was intitled to the annual interest of the said four hundred pounds during their minority, until they respectively married, for their maintenance and education, standing indebted to the said W. R. Howell in manner in the said indenture mentioned, and for the better securing the payment of certain annuity or yearly sum of one hundred and seventy-five pounds therein mentioned, to the said Walter Rice Howell, ne the said Thomas Howell for the considerations therein mentioned, and by virtue of all and every power in the said Thomas Howell vested, did, for himself, his heirs, executors, and administrators, by the said indenture order and direct the said Walter Rice Howell to call in the said four hundred pounds, and to lay out the same on good security, from the date of the execution thereof, and to retain the yearly interest and produce thereof in his hands for the purpose aforesaid, until the said J. I. Howell, and M. E. Howell should respectively attain the age of twenty-one years, or should be married, which should first happen, or the said yearly interest

of the said sum of four hundred pounds being not paid to or retained by the said Walter Rice Howell and his assigns for his and their own use and benefit, at the expence and charges of the maintenance and education of the said children as aforesaid, then for the further securing the payment of twenty pounds to the said W. R. Howell, and his assigns, for the life of the said W. R. Howell; he the said J. Howell, for himself, his heirs, executors, and administrators, and for every of them, did further covenant, promise, grant, and agree to and with the said W. R. Howell, and his assigns, and to and with every of them, by the said indenture in manner and form following, that is to say, that he the said Thomas Howell, his executors, or some or one of them, should and would yearly and every year during the term of the natural life of the said W. R. Howell, from and immediately after the said J. I. Howell, and M. E. Howell attaining their respective ages of twenty-one years, or be married, which should first happen, or the said yearly interest of four hundred pounds being not paid or retained by the said Walter Rice Howell as aforesaid, well and truly pay, or cause to be paid to the said Walter Rice Howell, and his assigns, the further sum of twenty pounds, for and in lieu of the interest money of the said sum of four hundred pounds, so bequeathed by the said Mary Evans as aforesaid, clear of all deductions, charges, taxes, assessments, or impositions: and the said Jane in fact further saith, that the said Thomas Howell, after making of the said indenture, to wit, on the first day of March, in the year of our Lord 1789, at London aforesaid, in the parish and ward aforesaid, died, and after the death of the said Thomas Howell, to wit, on the thirtieth day of December, in the third year, 1789, at London aforesaid, in the parish and ward aforesaid, the said W. R. Howell also died, leaving the said J. I. Howell, and M. E. Howell in the said indenture mentioned, him surviving, and without their having attained, or either of them having attained the age of twenty-one years, or been or being married: and the said Jane in fact further saith, that on the twenty-ninth day of September next before the death of the said Thomas Howell, to wit, on the twenty-ninth day of September, in the year of Our Lord 1788, at London aforesaid, in the parish and ward aforesaid, a large sum of money, to wit, the sum of fifty-five pounds ten shillings of the said annuity or yearly sum of twenty-seven pounds fifteen shillings, in the said indenture mentioned, for two years of the said annuity or yearly sum of twenty-seven pounds, ending and ended on the day and year last aforesaid, became and was due and owing and payable from the said Thomas Howell to the said W. R. Howell, under and by virtue of the said indenture, and of the said covenant of the said Thomas Howell in that behalf made as aforesaid; and the said Jane in fact further saith, that from the time of the making of the said indenture, until the twenty-ninth day of September next before the death of the said W. R. Howell, to wit, on the twenty-ninth day of September, in the said year 1789, the said yearly interest

in the said indenture mentioned of the said four hundred pounds therein also mentioned, was not paid to or retained by the said W. R. Howell, but such interest was for and during all that time, had and received by the said Thomas Howell to his own private use and benefit, to wit, at London aforesaid, in the parish and ward aforesaid, and that on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, a large sum of money, to wit, the sum of sixty pounds of the said yearly sum of twenty pounds in the said indenture mentioned, and thereby as aforesaid covenanted to be paid to the said W. R. Howell, in the event of such interest as aforesaid not being paid or retained by him the said W. R. Howell, for divers, to wit, three of the yearly payments of the said sum of twenty pounds in the said indenture mentioned, became and was due, owing and payable to the said W. R. Howell, under and by virtue of the said indenture, and of the said covenant of the said Thomas Howell in that behalf made as aforesaid, which said several sums of fifty-five pounds ten shillings, and sixty pounds so becoming and being due and payable under and by virtue of the said indenture, and of the aforesaid covenants of the said Thomas Howell, are still due and in arrear from the said Jane, as such administratrix as aforesaid, unto the said Walter Powell, executor of the last will and testament of the said W. R. Howell deceased, to wit, at London aforesaid, in the parish and ward aforesaid; And the said Jane further says, that she hath fully administered all and singular the goods and chattels which were of the said Thomas Howell deceased, at the time of his death, which have ever come to the hands of the said Jane to be administered, except goods and chattels to the value of twenty pounds, to wit, at London aforesaid, in the parish and ward aforesaid; and that she the said Jane hath not, nor on the day of exhibiting the bill of the said Richard, or at any time afterwards, had she any goods or chattels which were of the said Thomas Howell deceased, at the time of his death, in her hands to be administered, except the said goods and chattels to the value of twenty pounds, which are not sufficient to pay off or satisfy the money so as aforesaid due and owing on the said several judgments so recovered as aforesaid, and on the said indenture and covenants herein before mentioned, to which they are charged and bound; and this she is ready to verify: wherefore she prays judgment if the said Richard ought to have or maintain his aforesaid action thereof against her, &c.

V. LAWES.

AND the said Sarah Percival and Thomas, by H. Rosser their attorney, come and defend the wrong and injury, when, &c. and say, that the said Thomas Hales, deceased, did not undertake and promise in manner and form as the said Margaret hath above thereof complained against them; and of this they put themselves upon the country, &c.; and the said Sarah, for further plea in this behalf, by leave of the court here for this purpose first had and obtained

Plea, 1st, general issue, *non assumpsit* by testator by three defendants, *plene administravit* by each severally.

EXECUTORS, &c.—REPLICATION.

obtained, according to the form of the statute in such case made and provided, for herself only says, that the said M. ought not to have or maintain her aforesaid action thereof against her, because she says, that she has fully administered all and singular the goods and chattels which were of the said Thomas Hales, deceased, at the time of his death, which have ever come to or been in her hands, to be administered, and that she the said Sarah hath not, nor had she, on the day of exhibiting the bill of the said Margaret, or has she had at any time since, any goods or chattels which were of the said Thomas Hales, deceased, at the time of his death, in the hands of the said Sarah, to be administered; and this she the said Sarah is ready to verify: wherefore she prays judgment if the said Margaret ought to have or maintain her aforesaid action thereof against her, &c.; and for further plea (the same plea by defendant Percival); and for further plea, &c. (same plea by defendant Thomas Green.)

E. WIGLEY.

Replication taking issue on the *non assumpsit*, and a conditional judgment of assets in futuro on the other three pleas jointly on the event of the issue being found for the plaintiff.

And the said Margaret, as to the said plea of the said Sarah Percival and Thomas, by them first above pleaded in bar, and whereof they have put themselves upon the country, doth the like, &c.; and as to the said plea of the said Sarah by her secondly above pleaded in bar, and also as to the said plea of the said Percival by him thirdly above pleaded in bar, and also as to the said plea of the said Thomas Green by him lastly above pleaded in bar, the said Margaret says, that inasmuch as the said Sarah Percival and Thomas Green, executors in form aforesaid, have not in or by their said several pleas, denied the aforesaid action of the said Margaret, administratrix as aforesaid, nor but that she the said Margaret, administratrix as aforesaid, ought to recover her damages aforesaid by her sustained on occasion of the non-performance of the said several promises and undertakings in the said declaration mentioned; and forasmuch as the said Margaret cannot deny but that the said Sarah Percival and Thomas Green have not now, nor had any or either of them at the time of exhibiting the bill of the said Margaret against the said Sarah Percival and Thomas Green, any goods or chattels which were of the said Thomas Hales deceased, at the time of his death in their hands to be administered, prays judgment and her damages, by reason of the non-performance of the several promises and undertakings in the said declaration mentioned, to be adjudged and to be levied of the goods and chattels which were of the said Thomas Hales deceased at the time of his death, and which shall hereafter come to the hands of the said Sarah Percival and Thomas Green to be administered; therefore it is adjudged by his majesty's court, before the king himself here, that the said Margaret do recover against the said Sarah Percival and Thomas Green, executors as aforesaid, her damages, by reason of the non-performance of the said several promises and under-

dertakings in the said declaration mentioned, to be levied of the goods and chattels which were of the said Thomas Hales deceased at the time of his death, and which shall hereafter come to the hands of the said Sarah Percival and Thomas Green, executors as aforesaid, to be administered, in case the said issue above joined between the said parties shall be found for the said Margaret, but because it is unknown to the court of our lord the king, before the king himself now here, what damages the said Margaret hath sustained by reason of the premises, and because it is uncertain whether the said Sarah Percival and Thomas Green will be convicted upon the said issue above joined between the parties aforesaid; and because it is convenient and necessary, if they be convicted thereupon, that there be but one taxation of damages in this suit: therefore let such taxation be stayed until the trial and determination of the issue above joined between the parties aforesaid; and in order to try the said issue, let a jury come, &c.

THO. BARROW.

DESCHAMPS AND EXECUTORS, &c.

at the suit of

RANDALL AND ANOTHER, ASSIGNEES.

Deschamps, James Danch, and Catharine Hudson, executors and executrix as aforesaid, by John Beard their attorney, come and defend the wrong and injury, when, &c. and say, that the said John Randall and Samuel Lloyd, assignees as aforesaid, ought not to have or maintain their aforesaid action against them, because they say, that one Samuel Marsh, in the lifetime of the said Giles Hudson, to wit, in Easter term in the twenty-second year of the reign of our lord the now king, in the court of our said lord the king, before the king himself here (the said court then and still being held at Westminster in the county of Middlesex), by bill without the writ of our said lord the king, by the consideration and judgment of the said court recovered against the said Giles Hudson as well a certain debt of sixty-four thousand pounds, as also sixty-three shillings for the damages which he had sustained by reason of the detaining that debt, whereof the said Giles Hudson was convicted, as by the record and proceedings thereupon remaining in the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, more fully appears; which said judgment still remains in full force and effect, not reversed, satisfied, or otherwise vacated, and there is now due and owing thereupon to the said Samuel Marsh a large sum of money, to wit, the sum of one hundred and five pounds twelve shillings and tenpence of lawful money of Great Britain, to wit, at London aforesaid, in the parish and ward aforesaid: And the said defendants further say, that the said G. H. in his lifetime, to wit, on the eighth of January A. D. 1772, to wit, at London, &c. aforesaid, by his certain

Plea to action at the suit of plaintiffs, as co-assignees under a commission of bankrupt against defendants as executors, of outstanding debts, of bond for payment of money only, bonds for payment of money in consideration of a marriage under certain conditions which are performed of the debts due under the assignment, to plaintiffs, and defendants shew that the commissioners had brought an action against defendants for same, which was still depending of debts on judgment recovered against testator in his lifetime, and against defendants as exe-

cutor, and of debts due by simple contract by testator. Another bond, for payment of a large sum, in consideration of a marriage between defendant's testator and one of defendants, on condition, which took effect, which money is still due to another of defendants, and satisfied.

writing-

EXECUTORS AND ADMINISTRATORS.

writing obligatory, sealed with his seal, and now shown to the court of our lord the king before the king himself here, the date whereof is the day and year last aforesaid; and which said writing-obligatory was then and there made for a good and valuable consideration, acknowledged himself to be held and firmly bound to one John Deschamps the elder, now deceased, in his lifetime, and the said John Deschamps the now defendant, in the penal sum of seventeen thousand four hundred pounds of lawful money of Great Britain, with and under a certain condition thereto subscribed, that in case a marriage between the said Giles Hudson and the said Catharine Hudson (then Catharine Deschamps), should take effect, and she the said E. H. should happen to survive the said G. H. her then intended husband, or in case there should be any child or children between him and the said G. H. and the said C. H. living at the time of the decease of the said G. H. or born at due time after the decease, then if the heirs, executors, or administrators of him the said G. H. did or should, at, upon, or immediately after the time of his decease, well and truly pay or cause to be paid unto the said J. D. the elder, and the said J. Deschamps the now defendant, or one of them, and the survivor of them, or the executors or administrators of such survivor, the sum of eight thousand seven hundred pounds, together with interest for the same at and after the rate of four pounds per cent. per annum; and from the time of the decease of him the said G. H. up to the time the said sum of eight thousand seven hundred pounds should be paid for the benefit of such person and persons, and to and for, and upon the several uses, trusts, intents and purposes mentioned, expressed, and declared in and by one indenture tripartite, bearing even date with the said bond, and made or mentioned to be made between the said Giles Hudson of the first part, the said C. H. of the second part, and the said J. D. the elder, and J. D. the now defendant, of the third part (one part of which said indenture, sealed with the respective seals of the said G. H. the said C. H. J. D. the elder, and J. D. the now defendant, they the said defendants now bring into court, the date whereof is the day and year last aforesaid), then the said obligation was to be void and of no effect, otherwise to be and remain in full force and virtue; which said writing-obligatory, at the time of the death of the said G. H. was in full force and effect, not satisfied, discharged, or cancelled: And the said defendants further say, that the said marriage between the said G. H. and the said Catharine Hudson in the said condition of the said writing-obligatory mentioned, after the making of the said writing-obligatory, to wit, on the ninth day of January in the year last aforesaid, did take effect, to wit, at London, &c. aforesaid; and the said Catharine Hudson survived the said G. H. and divers, to wit, three children between the said G. H. and the said C. H. were there living at the time of the decease of the said G. H. and the said J. D. the now defendant also survived the said J. D. the elder, who died in the lifetime of the said G. H.; whereby,
and

and according to the tenor and effect of the said condition of the said writing-obligatory, there was and is due and owing thereupon to the said John D. the now defendant, the said sum of eight thousand seven hundred pounds in the said condition mentioned :

And the said defendants further say, that the said G. H. in his lifetime heretofore, to wit, on the twentieth day of April A. D. 1769, to wit, at London, &c. aforesaid, by his certain writing-obligatory, sealed with his seal, and now shewn to the court of our said lord the king before the king himself here, the date whereof is the day and year last aforesaid (which said mentioned writing-obligatory was then and there made for a just and true debt), acknowledged himself to be held and firmly bound to the said James Danch in the penal sum of one thousand one hundred pounds of like lawful money of Great Britain, with and under a certain condition thereto subscribed, that if the said G. H. his heirs, executors, or administrators, or any of them, should or did pay, or cause to be paid unto the said J. Danch the sum of five hundred and fifty pounds with interest for the same, after the rate of five pounds by the hundred pounds by the year, of good and lawful money of Great Britain, on the twentieth of October next ensuing the date thereof the said last-mentioned writing-obligatory was to be void, or else to remain in full force ; which said last-mentioned writing-obligatory, at the time of the death of G. H. was in full force and effect, not satisfied, discharged, or cancelled, and there was then due and owing thereupon, for principal and interest of the said James D. a large sum of money, to wit, the sum of five hundred and fifty-nine pounds two shillings and threepence of lawful money of Great Britain: *And* the said defendants further say, that by a certain indenture made on the fifteenth of May A. D. 1781, to wit, at Westminster in the county of Middlesex, between John Thomas Batt esquire, Francis Hargrave esquire, and Francis Russel gentleman, the major part of the commissioners named and authorized in and by a commission of bankruptcy awarded and issued against William Gines and Elenez Atkinson of Lombard-street in the city of London, bankers and copartners, of the first part, one David Caddell and William Wheatly (by the name and description of David Caddell of Chancery-lane London, gentleman, messenger under the said commission, and William Wheatly, of Erith in the county of Kent, esquire ; which said D. C. and William Wheatly, together with Giles Hudson of Balinghall-street in the city of London, merchant, are provisional assignees of the said bankrupts estate and effects, of the second part, and the said Giles Hudson in his lifetime, and the said plaintiffs, by the names and descriptions of the said Giles Hudson, John Randall of Southampton-street Bloomsbury, shipbuilder, and Samuel Lloyd, of Thames-street London, hopseller) of the third part (reciting, as thereon is recited) the said G. H. J. R. and S. L. did for themselves severally and respectively, and for the several and respective heirs, executors, and administrators, covenant, promise, and agree to and

Another bond to
T. D. the de-
fendant.

That defend-
ant's testator,
together with
plaintiff's exe-
cutors, were as-
signees of a
bankrupt, and
received ef-
fects, but never
made a divi-
dend, whereby
defendants are
liable to the com-
missioners, who
have brought an
action for same
which is still de-
pending.

with

EXECUTORS, &c.—OUTSTANDING DEBTS,

with the said commissioners, parties to the said indenture, that the said G. H. J. R. and S. L. their executors, administrators, and assigns, should and would, from time to time, and at all times thereafter, upon the reasonable request or other notice to them given for that purpose, make, render, and give unto the said commissioners, parties to the same indenture, or the major part of the said commissioners, in and by the said commission named and authorized, or the major part of the commissioners to be named in and by any renewed commission which might be awarded against the said W. G. and E. A. at such time and place as they should appoint, a true, just, and perfect account in writing under the hands of the said G. H. J. R. and S. L. then executors and administrators of all and singular the estate and effects of the said W. G. and E. A. which they the said G. H. J. R. and S. L. their executors and administrators, should have then recovered and received by virtue or means of the same deed of assignment or otherwise, and all such monies, as upon such account should appear to have been so had and received, should and would well and truly pay and distribute, or cause to be paid and distributed unto and amongst all and every the creditors of the said W. G. and E. A. who had then already sought relief, or should thereafter in due time come and seek relief under and by virtue of the said commission, according to the directions of the several statutes therein mentioned, in proportion to the several debts owing to and proved by them respectively under the said commission, in such manner as the said commissioners, or the major part of them, should, by an order for that purpose, direct and appoint, as by the same indenture will more fully appear; by virtue of which same indenture, they the said G. H. in his lifetime, J. R. and S. L. became intitled to all and singular the goods and chattels, debts, sum and sums of money, and all other the estate and effects of and belonging unto the said W. G. and E. A. upon the trusts in the said indenture mentioned: And the said defendants in fact say, that at and before the order of dividend hereafter mentioned, divers debts to a large amount, to wit, the sum of forty-three thousand four hundred and thirty-six pounds five shillings and tenpence, were proved under the said commission, and sundry claims were also duly made of other debts under the said commission to a large amount, to wit, the further sum of one thousand three hundred and ninety pounds fifteen shillings and elevenpence, to wit, at Westminster in the county of Middlesex aforesaid: And the said defendants further say, that the said G. H. J. R. and S. L. in the lifetime of the said G. H. and before the time of the making of the said order of dividend, had recovered and received divers large sums of money, part of and arising from the sale of the estates and effects of the said W. G. and E. A. by virtue and means of the said indenture, to wit, at Westminster aforesaid, and afterwards, to wit, on the tenth day of December A. D. 1781, at Westminster in the county of Middlesex aforesaid, the said G. H. J. R. and S. L. in the lifetime of the said G. H.

G. H. admitted that they had sufficient money in their hands to pay all the creditors of the bankrupts who had proved their debts under the said commission, and to reserve for those who had claimed under the same, after the rate of two shillings in the pound on the respective debts so proved and claimed; and the said John Thomas Batt, Francis Hargrave, and Francis Russel, pursuant to the said commission, did then and there order and direct that the said G. H. J. R. and S. L. should forthwith pay and divide unto and amongst all and every the creditors of the said bankrupts who had proved their debts under the said commission two shillings in the pound upon such their respective debts, and reserve the same for those who had so claimed, until they should have proved such their respective claims, whereof the said G. H. J. R. and S. L. afterwards, in the lifetime of the said G. H. to wit, on the same day and year last aforesaid, at, &c. aforesaid, had notice; and though more than a reasonable time has elapsed for that purpose, yet the said G. H. J. R. and S. L. in the lifetime of the said G. H. did not, nor did any or either of them pay and distribute, nor have the said J. R. and S. L. or any or either of them, since his decease, distributed and paid (although often requested) unto and amongst the said creditors of the said bankrupts, who had proved the debts under the said commission as aforesaid, or any of them, two shillings in the pound upon such their respective debts, or any sum of money whatsoever, but the same and every part thereof is still unpaid, contrary to the form and effect of the said indenture, and of the said covenant of the said Giles Hudson in that behalf made as aforesaid: And the said defendants, executors and executrix as aforesaid, in fact further say, that the damages sustained by the said J. J. Batt, F. H. and J. R. by reason of the non-performance of the said covenant in manner aforesaid, amount to a large sum of money, to wit, the sum of one thousand four hundred and thirty-six pounds seventeen shillings and eightpence, which said sum of one thousand four hundred and thirty-six pounds seventeen shillings and eightpence is due and owing from the said defendant, as executor and executrix as aforesaid to the said J. F. B. F. H. and they the said J. F. B. F. H. and F. R. have brought an action for the same, which is still depending against the said defendants, executors and executrix as aforesaid, to wit, at Westminster aforesaid in the county of Middlesex aforesaid: And the said J. D. the now defendant, J. Danch, and C. H. further say, that the said G. H. in his lifetime, and at the time of his death, was truly and justly indebted to the said James Danch and one Elizabeth Maynard, widow, and one John Cartwright Maynard, partners and joint dealers, in the further sum of one hundred and ten pounds fifteen shillings and tenpence of like lawful money, for divers goods, wares, and merchandizes by the said John D. E. Maynard, and J. C. Maynard before that time sold and delivered to the said G. H. and at his special instance and request, and for the work and labour, care and diligence of the said John Danch, Elizabeth M. and J. C. M. before that time done, performed, and bestowed in and about the busi-

Debts to partnership for goods sold and delivered, the work and labour, &c.

Another judgment to another person, unsatisfied, recovered against defendants, as executors.

For just debts.

Plene administravit ultra, fourteen pounds.

business of the said G. H. and for the said G. H. and at his like special instance and request: *And* the said defendants further say, that one Ann Hudson, spinster, after the death of the said G. H. to wit, in Easter term in the twenty-third year of the reign of our lord the now king, in the court of our said lord the king before the king himself here, to wit, at Westminster aforesaid, by bill without the writ of our said lord the king, and by the consideration and judgment of the same court recovered against the said defendants, as executors and executrix as aforesaid, six hundred and sixty-five pounds nineteen shillings and fourpence for the damages which he had sustained by reason of the not performing certain promises and undertakings theretofore made by the said G. H. in his lifetime to the said Ann Hudson, as also five pounds for her costs and charges by her about her suit in that behalf expended, to be levied of the goods and chattels which were of the said G. H. at the time of his death, and which, after satisfying the several debts and sums of money therein mentioned, should thereafter come to the hands of the said defendants, or any or either of them, to be administered, as by the record and proceedings thereof now remaining in the court of our said lord the king before the king himself here, to wit, at Westminster aforesaid, more fully appears; which said last-mentioned judgment still remains in full force and effect, not in anywise reversed, satisfied, or otherwise vacated [there were a great number of other judgments, similar to the last contained in the plea]: And the said defendants further say, that the several judgments so had and obtained by the said Ann Hudson, &c. &c. &c. &c. &c. respectively against them the said defendants, as executors and executrix as aforesaid, were had and obtained for a true and just debt, really and bonafide due and owing from the said G. H. at the time of his death to them the said Ann Hudson, &c. &c. &c. &c. &c. respectively, and at the time of the rendering the said several judgments, wholly unpaid and unsatisfied: And the said defendants further say, that they have fully administered all and singular the goods and chattels which were of the said G. H. at the time of his death, which have ever come to the hands of them the said defendants, or any or either of them, to be administered, except goods and chattels to the value of ten pounds; and that they have not, nor hath any or either of them, nor had they, or any or either of them, at the time of the exhibiting the said bill of the said plaintiffs, or at any time since, any goods or chattels which were of the said G. H. at the time of his death, in their or any of their hands, to be administered (except the said goods and chattels to the value aforesaid, which are not sufficient to pay and satisfy the several debts and sums of money due and owing in manner and on the several occasions aforesaid, and which are liable and subject to the payment and satisfaction thereof; and this they the said defendants are ready to verify: wherefore they pray judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against them; and they bring into court here the

the letters testamentary of the said G. H. deceased, whereby it fully appears to the court here that they the said defendants are executors and executrix of the last will and testament of the said G. H. deceased, and have the execution thereof, &c.

Drawn by MR. TIDD.

SMITH, EXECUTOR, &c.

against

HIGFORD, CLERK, AND ANOTHER

ADMINISTRATOR, &c.

AND the said plaintiff } prays a day to imparl to the Special replica-
 } said plea, and it is granted tion to a plea of
 } him, &c. and thereupon a *plene administra-*
 day is given to the parties aforesaid, to come before our lord the *vit*, setting forth
 king at Westminster, on Tuesday next after the eighth day of St. the suing forth
 Hilary, that is to say, for the said plaintiff to imparl to the said *latitat*, and that
 plea, and then to reply to the same, &c. at which day, before our at the time of
 lord the king at Westminster, came the parties aforesaid by their the suing out,
 attornies aforesaid: And the said plaintiff says, that he, by reason &c. defendant
 of any thing by the said defendants in their said plea above alledg- had assets in his
 ed, ought not to be barred from having his aforesaid action there- hands sufficient,
 of maintained against the said defendants; because he saith that he &c.
 the said plaintiff, for the recovery of his damages by him sustained
 on occasion of the not performing of the said promises and under-
 takings in the said declaration mentioned, after the death of the
 said Anthony Crosse, to wit, on the fifth day of September, in the
 twentieth year of the reign of our lord the now king, sued and
 prosecuted out of the court of our lord the now king, before the
 king himself (the said court then and still being held at Westmin-
 ster in the county of Middlesex), a certain writ of our said lord
 the king, called a *latitat*, against the said defendant, directed to the
 sheriff of Gloucestershire, by which said writ our said lord the
 king commanded the said sheriff that he should take the said de-
 fendants by the names and description of, &c. if they might be
 found in his bailiwick, and them safely keep, so that the said
 sheriff might have their bodies before our lord the king at West-
 minster, on Monday next after the morrow of All Souls then next
 following, to answer unto the said plaintiff in a plea of trespass, and
 that the said sheriff should have there then that writ, as by the said
 writ may more fully and at large appear; which said writ so sued
 and prosecuted out of the said court by the said plaintiff against
 the said defendants, with intent that the said defendants might
 each be sued respectively with a copy thereof according to the
 form of the statute in such case made and provided, and be there-
 by compelled to file and put in common bail at the return thereof
 in the said court of our said lord the king, before the king himself,
 at the suit of the said plaintiff, and that the said plaintiff might,
 upon such their filing and putting in such their common bail, ex-
 hibit his bill against the said defendants, as administrators afore-
 said, all and singular the goods and chattels, rights and credits,
 which were of the said Anthony Crosse deceased, at the time of
 his death, with the will of the said Anthony annexed, for the re-
 covery of his damages aforesaid: And the said plaintiff further saith,
 that

EXECUTORS, &c.—REJOINDER.

that afterwards, to wit, on the eleventh day of September, in the twentieth year aforesaid, the said Henry, one of the defendants, was served in due manner with a copy of the said writ, and afterwards, to wit, on the sixth day of October, in the year aforesaid, the said John, the other of the defendants, was likewise sued with a copy of the said writ, according to the form of the statute in such case made and provided, to wit, at Yate, and then and there had notice of the said suit of the said plaintiff: And the said plaintiff further saith, that at the return of the said writ, on Monday next after the morrow of All Souls therein mentioned, before our lord the king at Westminster, came, as well the said plaintiff, by his said attorney as the said defendants, by Edward Chum, the younger, their attorney aforesaid, and thereupon the said plaintiff then and there, to wit, in and of Michaelmas term, in the twenty-first year of the reign of the now king, exhibited his bill against the said defendants in the said court here, in manner and form aforesaid: And the said plaintiff says, that the said defendants, at the time of the said suing and prosecuting of the said writ of *latitat* out of the said court here, and afterwards and after the said defendants were served with copies thereof, and had notice of the said suit of the said plaintiff as aforesaid, had divers goods and chattels which were of the said A. C. deceased, at the time of his death in their hands to be administered, to the value of the damages aforesaid, by the said plaintiff above demanded, wherewith the said defendants might and ought to have satisfied the said plaintiff his damages aforesaid, to wit, at Yate, aforesaid; and this he is ready to verify: wherefore he prays judgment and his damages, by reason of the premises to be adjudged to him, &c. FOSTER BOWER.

Rejoinder, admitting the suing out and serving of the *latitat*, but say that defendant had not assets, &c.

HIGFORD, CLERK, AND
ANOTHER ADMINISTRATOR, &c.

at the suit of

SMITH, EXECUTOR, &c.

And the said defendants, as to the said plea of the said plaintiff by him above pleaded by way of reply to the said plea of the said defendants by them above pleaded in bar, say, that notwithstanding any thing by the said plaintiff in his said plea so pleaded by way of reply alledged, he the said plaintiff ought not to have his aforesaid action thereof maintained against them; because they say that though true it is that the said plaintiff did sue and prosecute out of the said court of our said lord the king, before the king himself now here, the said writ of *latitat* in his said plea so pleaded by way of reply mentioned, and that they the said defendants were respectively served with a copy thereof, and had notice of the said suit of the said plaintiff, as the said plaintiff hath above in his said plea so pleaded by way of reply alledged, yet, for rejoinder in this behalf, they the said defendants say, that they the said defendants had not at the time of the suing and prosecuting of the said writ of *latitat* out of the said court here, and afterwards and after the said defendants were sued with copies thereof, and had notice of the said suit of the said plaintiff as aforesaid, or at any or either of those times, goods or chattels which

which were of the said A. C. at the time of his death, in their hands to be administered, wherewith he might or could have satisfied the said plaintiff his damages aforesaid, or any part thereof, in manner and form as the said plaintiff hath above in his said plea by him above pleaded by way of reply alledged; and of this the said defendants put themselves upon the country, &c.

V. LAWES.

BOLTON, AND ANOTHER EXECUTORS,

&c.

at the suit of

ECLES, GENT. ONE, &c.

AND the said defendants, by A. B. their attorney, come and defend the wrong and injury, when, &c. and say, that the said plaintiff ought not to have or maintain his aforesaid action against them; because they say that they the said defendants have fully administered all and singular the goods and chattels which were of the said T. W. deceased, at the time of his death, and which have ever come to the hands of the said defendants, and that they have not, nor hath either of them, nor at the time of the exhibiting of the bill of the said plaintiff, or at any time afterwards, had they or either of them, in their or either of their hands or possession, any goods or chattels which were of the said T. W. deceased, at the time of his death unadministered, whereby the said plaintiff could or might have been satisfied his damages on occasion of the non-performance of the said several promises and undertakings in the said declaration mentioned, or any part thereof; and they the said defendants are ready to verify, wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them, &c.: And for further plea in this behalf, they the said defendants, by leave, &c. say, that the said plaintiff ought not to have or maintain his aforesaid action thereof against them; because they say, that one Richard Parkes and one Daniel Morgan, as assignees of the estates and effects of one Thomas Downing, a bankrupt within the true intent and meaning of the several statutes made, and then and now in force concerning bankrupts, some or one of them, in the lifetime of the said T. W. deceased, to wit, in Michaelmas term, in the twenty-first year of the reign of our lord the now king, in the court of our said lord the king, before the king himself (the said court then and still being held at Westminster in the county of Middlesex), by the consideration of the said court, recovered against the said T. W. one hundred and fifty-five pounds of lawful, &c. which, in and by the said court of our said lord the king, before the king himself, were adjudged to them the said R. P. and D. M. as such assignees as aforesaid, for their damages which they had sustained, as well on occasion of the not performing certain promises and undertakings by the said T. W. in his lifetime, and before the said J. D. became such bankrupt as aforesaid, made to the said J. D. as for their costs and charges by them about their suit in that behalf expended, whereof the said T. W. in his life-

Plea of superior debts, to wit, a JUDGMENT RECOVERED by assignee of a bankrupt against defendants' testator, in his lifetime, and bonds outstanding, money expended by one of the defendants in discharge and satisfaction of testator's debts, and *plene administraverunt præter* sl. which are not sufficient to satisfy, &c. with which they are charged.

One of defendants paid away his own money in discharge of testator's debts.

Plene administravit except *si* which is not sufficient to satisfy those debts.

time was convicted, as by the record and proceedings thereof remaining in the said court of our said lord the king, before the king himself here, more fully and at large appears; which said judgment has not been in any manner reversed, annulled, set aside, or vacated, but is still in full force, strength and effect, for a part of the money therein mentioned, that is to say, for the sum of one hundred pounds, which still remains unpaid and unsatisfied, to wit, at Westminster aforesaid: And the said defendants further say, that the said T. W. deceased, in his lifetime, to wit, on the fourteenth day of June A. D. 1775, at Westminster aforesaid, by his certain writing-obligatory, bearing date the day and year last aforesaid, and sealed with his seal, and then and there made for a true and just debt, acknowledged himself to be held and firmly bound to one Joseph Saunders: And the said defendants further say, that the said T. W. in his lifetime, [there were several other outstanding bonds pleaded]: And the said defendants further say, that J. B. (one of the defendants), so being such executor as aforesaid, after the decease of the said T. W. and before the exhibiting of the said bill of the said plaintiff against them the said defendants, to wit, on, &c. at, &c. advanced, disbursed, paid, laid out, and expended divers sums of money, in the whole amounting to a large sum of money, to wit, the sum of five hundred pounds of lawful money of Great Britain, of his own proper monies, in and about the payment, satisfaction, and discharge of divers true and just debts, which were due and owing by and from the said T. W. at the time of his decease, and for and on account and in respect to the personal estate of the said T. W. which said sum of five hundred pounds, so by the said J. B. advanced, disbursed, paid, laid out, and expended as aforesaid, at the time of the exhibiting of the said bill of the said plaintiff against them the said defendants, remained and continued, and still doth remain and continue wholly in arrear, unpaid and unsatisfied, to him the said J. B. to wit, at Westminster aforesaid: And they the said defendants further say, that the said several writings-obligatory herein before mentioned are, and each and every of them is still outstanding, unpaid, and unsatisfied, to wit, at Westminster aforesaid: And they the said defendants further say, that they have fully administered all and singular the goods and chattels, rights and credits, which were of the said T. W. deceased, at the time of his death, which have come to the hands of them the said defendants, or either of them, to be administered, and that they have not, nor hath either of them, nor had they or either of them, at the time of exhibiting the said bill of the said plaintiff against them, or at any other time since, any goods or chattels which were of the said T. W. deceased, at the time of his death in their or in either of their hands to be administered, except goods and chattels to the value of five pounds, which are not sufficient to pay or satisfy the said judgments and writings-obligatory herein before mentioned, and the aforesaid demand of him the said J. B. to which they are bound and chargeable; and this they are ready to verify; wherefore they pray

pray judgment if the said plaintiff ought to have or maintain his
aforesaid action against them, &c.

W. BALDWIN.

KAYSHAM, EXECUTRIX, &c.
at the suit of

BACON AND ANOTHER EXECUTORS, &c. } AND the said de-
fendant, by A. B. her
attorney, comes and
defends the wrong and injury, when, &c. and says, that the said
plaintiffs ought not to have and maintain their said action against
her; because she says that one Frederick Young and Elizabeth
his then wife, in the lifetime of the said, &c. [defendant's testator]
to wit, in Easter term, in the fifteenth year of the reign of our
lord the now king, in his majesty's court, before Sir William
De Grey, knt. and his companions, then his majesty's justices,
of the bench at Westminster, by the consideration of that court
recovered against the said, &c. [defendant's testator], as well a
certain debt of two thousand pounds, as also nineteen pounds fif-
teen shillings, which in and by the said court of our said lord the
king of the bench, were adjudged to the said F. Y. and Elizabeth
his wife, for the damages which they had sustained, as well on
occasion of the detaining of that debt, as for their costs and char-
ges by them about their suit in that behalf expended, whereof the
said John [defendant's testator], in his lifetime, was convicted,
as by the said record and proceedings thereof remaining in the said
court of our said lord the king of the bench at Westminster afore-
said, more fully and at large appears, which said judgment, so had
and obtained, was so had and obtained for a just and true debt; and
the said judgment still remains in its full force, strength, and effect,
not reversed, annulled, set aside, or in any wise paid off or satisfied:
And the said defendant further saith, that she hath fully admini-
stered all and singular the goods and chattels which were of the
said, &c. [defendant's testator], deceased, at the time of his death,
which have ever come to her hands to be administered, except
goods and chattels to the value of three hundred and ninety-four
pounds, to wit, at, &c. aforesaid; and that she the said defendant
hath not, nor on the day of exhibiting, &c. or at any time since,
had she any goods or chattels which were of the said, &c. [defend-
ant's testator], deceased, at the time of his death in her hands to
be administered, except the goods and chattels to the value of the
said three hundred and ninety-four pounds, which are not sufficient
to pay off and discharge the money due and owing on the said
judgment so recovered as aforesaid, to which they are charged;
and this she is ready to verify; wherefore she prays judgment if
the said plaintiffs ought to have or maintain their aforesaid action
against her, &c.

Plea of JUDG-
MENT RE-
COVERED in C.
B. at the suit of
plaintiffs *baron*
and *feme*.

V. LAWES.

BLACKESTON AND OTHERS }
at the suit of

SPELDON, EXECUTOR, &c. } AND the said plaintiffs say, that
notwithstanding any thing by the
said defendant above in pleading
alleged, they the said plaintiffs ought not to be barred from hav-
ing

Replication to a
plea of superior
debt pleaded.

REPLICATION.—SUPERIOR DEBT.

ing and maintaining their aforesaid action against him the said defendant; because, protesting that the said plea and the matter therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar them the said plaintiffs from having and maintaining their aforesaid action against him the said defendant, for replication in this behalf they say, that after the making of the said writing-obligatory in the said plea alledged to have been made by the said W. S. [defendant's testator], to the said John Baker in the said plea mentioned, and before the pleading the said plea, to wit, on the first day of January A. D. 1783, the said writing-obligatory to the said John Baker and all money thereon due and payable, was fully paid off, discharged, and satisfied unto him the said John Baker, to wit, at Westminster, &c. : But the said plaintiffs in fact further say, that notwithstanding such payment and discharge of the said writing-obligatory to the said John Baker as aforesaid, the said writing-obligatory is still kept on foot uncanceled, by the fraud and covin of the said defendant, with intent to defraud them the said plaintiffs of their damages by them sustained on occasion of the premises in the said declaration mentioned; and this they are ready to verify; wherefore they pray judgment and their damages by them sustained on occasion of the said premises, to be adjudged to them, &c.

It does not appear by the instructions when or by whom the bond in question was paid, I have therefore drawn the replication very open, and perhaps un-

commonly so; but I think it is sufficiently certain to meet any objection.

V. LAWIS.

Plea by executor, that testator *non assumpsit* to 1st, 2d, and last Counts, and as to the 3d Count, divers bonds in large sums from testator to defendant himself, and *plene administravit* præter a certain sum which he retains in part satisfaction.

BEVAN, EXECUTOR, &c. }
at the suit of }
MOFFATT. }

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the first, second, and last Counts in the said declaration, says, that the said J. B. testator, *non assumpsit*: And as to the 3d Count in the said declaration mentioned, he the said defendant says, that the said plaintiff *actio non*; because he saith that the said J. B. the testator, in his lifetime, to wit, on the twenty-fifth day of March 1773, at London aforesaid, in the parish and ward aforesaid, by his certain writing-obligatory, sealed with his seal, and the court of our lord the king now here shewn, the date whereof is the day and year last aforesaid, and then and there made for a just and true debt, acknowledged himself to be held and firmly bound to the said defendant in the sum of ten thousand pounds of lawful, &c. to be paid to the said defendant when he the said J. B. should be thereunto required, with a condition thereto subscribed, that if the said J. B. his heirs, executors, or administrators, should and did well and truly pay, or cause to be paid unto the said defendant, his executors, administrators, or assigns, the full sum of five thousand pounds of good and lawful money of Great Britain, on or before the twenty-sixth day of March 1774, together with

lawful

lawful interest for the same, then that obligation to be void, or else to remain in full force and virtue; which writing-obligatory, at the time of the death of the said J. B. was in full force and effect, not satisfied, discharged, or cancelled; and at the time of the death of the said J. B. there was due to the said defendant upon the said writing-obligatory of the said J. B. for principal and interest, the sum of five thousand and fifteen pounds five shillings: And the said defendant further saith, that the said J. B. in his lifetime, to wit, on the said twenty-sixth of March A. D. 1773, at, &c. aforesaid, by his certain other writing-obligatory, sealed, &c. [set out another bond as before] to the defendant on the penal sum of twelve thousand pounds, conditioned for the payment of six thousand pounds on the twenty-sixth day of March 1776, upon which six thousand and eighteen pounds eighteen shillings was due for principal and interest at testator's death: And the said defendant further saith, that the said J. B. in his lifetime, to wit, on the eighteenth of April 1773, at, &c. aforesaid, made his last will and testament in writing, and thereby constituted and appointed the said defendant executor thereof, and afterwards, to wit, on the day and year last aforesaid, there died, without altering or revoking the same, after whose death the said defendant there proved the said will, and took upon himself the burthen of the execution thereof: And the said defendant further saith, that he hath fully administered all and singular the goods and chattels, rights and credits, which were of the said J. B. at the time of his death, which have come to the hands of the said defendant to be administered; and that he hath not any goods or chattels which were of the said J. B. at the time of his death in his hands to be administered, nor had any on the day of exhibiting, &c. or at any time since, except goods and chattels to the value of four thousand one hundred and seventeen pounds two shillings and sixpence, which were not sufficient to satisfy and discharge the writing-obligatory aforesaid, or the money due thereon, and which he the said defendant retains in his hands towards satisfaction thereof; and this, &c.; wherefore, &c. if, &c.

F. BULLER.

AND the said Thomas and Edward, by John W. their attorney, come and defend the wrong and injury, when, &c. and say, that the said Catharine ought not to have or maintain her aforesaid action thereof against them; because they say that they have fully administered all the goods and chattels which were of the said Sarah at the time of her death, which have come to their or either of their hands to be administered; and that they have not nor hath either of them any goods or chattels which were of the said Sarah at the time of her death to be administered; nor had any on the day of exhibiting the bill of the said Catharine, nor at any time afterwards; and this they are ready to verify; wherefore they pray judgment if the said Catharine ought to have or maintain her aforesaid action thereof against them, &c.

W. BALDWIN.

Plene administravit by administrators.

Plea of *plene ad-*
ministravit, and
outstanding
bond.

AND the said William Hawes, by John Nix his attorney, comes and defends the wrong and injury, when, &c. and says, that the said Robert Mein ought not to have or maintain his aforesaid action thereof against him; because he says that the said William Hawes hath fully administered all and singular the goods and chattels which were of the said Elizabeth Bell at the time of her death, which have ever come to the hands of him the said William Hawes to be administered; and that he hath not, nor on the day of the exhibiting of the bill of the said Robert Mein, or at any time since, had any goods and chattels which were of the said Elizabeth Bell at the time of her death in his hands to be administered; and this he is ready to verify; wherefore he prays judgment if the said Robert Mein ought to have or maintain his aforesaid action thereof against him: And for further plea in this behalf, the said William Hawes, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that he the said Robert Mein ought not to have or maintain his aforesaid action thereof against him; because he says that the said Elizabeth Bell, in her lifetime, to wit, on the thirteenth day of December in the year of Our Lord 1765, at Maidstone aforesaid, in the county aforesaid, by her writing-obligatory, sealed with her seal, became bound to one Stephen Flower in the sum of seventy-seven pounds and five shillings of lawful money of Great Britain, to be paid to the said Stephen Flower whenever the said Elizabeth Bell should be thereto afterwards requested; which said writing-obligatory, at the time of the death of the said Elizabeth Bell, was and still is in full force, not released, cancelled, annulled, or in any wise paid or satisfied: And the said William Hawes further says, that he the said William Hawes hath fully administered all and singular the goods and chattels which were of the said Elizabeth Bell at the time of her death, and which have come to the hands of him the said William Hawes to be administered, except goods and chattels to the value of five pounds; and that he the said William Hawes hath not, nor on the day of the exhibiting of the bill of the said Robert Mein, or at any time since, had any goods or chattels which were of the said Elizabeth Bell at the time of her death, in his hands to be administered, except the said goods and chattels to the value of the said five pounds, which are not sufficient to satisfy the said debt so due and owing on the said writing-obligatory, and which are subject and liable to the payment and satisfaction thereof; and this he the said William is ready to verify; wherefore he prays judgment if the said Robert Mein ought to have or maintain his aforesaid action thereof against him, &c.

JAMES WALLACE.

FOREIGN

FOREIGN ATTACHMENT.

AND the said Benjamin and John, by A. B. their attorney, ^{Plea, non-af-}
 come and defend the wrong and injury, when, &c. ; and as to the ^{sumpsit as to}
 several promises and undertakings in the said declaration of the ^{part, and as to}
 said Catharine, Agatha, and Johanna, above supposed to be made ^{residue plea of}
 by the said Benjamin and John, as to all the said several sums of ^{foreign attach-}
 money in the said declaration mentioned, except as to seventy- ^{ment.}
 nine pounds and ninepence, parcel thereof, they the said Benjamin
 and John say, that they did not undertake or promise in manner
 and form as the said Catharine, Agatha, and Johanna have above
 declared against them ; and of this they put themselves upon the
 country, &c. : And as to the said several promises and undertakings
 above supposed to be made by the said Benjamin and John, as to
 the said sum of seventy-nine pounds and ninepence, the said Ben-
 jamin and John say, that the said Catharine, Agatha, and Johanna
 ought not to have their aforesaid action thereof maintained against
 them ; because they the said Benjamin and John say, that the
 city of London is, and time out of mind hath been, an ancient
 city, and that there now is, and time immemorial hath been, a
 certain custom used and approved within the same city, that is to
 say, that if any person be or hath been indebted to any other per-
 son within the said city in any sum of money, and for recovery
 thereof such person affirm, or hath affirmed, a bill original in
 debt in the court of his present majesty or his predecessors, kings
 or queens of England, held or to be holden before the mayor and
 aldermen of the said city for the time being, in the chamber of
 the Guildhall of the said city, within the said city, according to the
 custom of the said city, against such person so indebted, and by
 virtue of such bill original it be or hath been commanded by the
 said court to any of the serjeants at mace of the said mayor and
 aldermen for the time being, and a minister of the said court, to
 summon such person named defendant in the said bill original, to
 be and appear in the said court held before the mayor and aldermen
 of the said city for the time being, in the chamber of the Guildhall
 of the said city, to answer the plaintiff on such bill original ; and
 if such serjeant at mace and minister of the said court, by virtue of
 such precept, *return and certify, or hath returned and certified,* to
 the said court holden as aforesaid, that such defendant in the bill
 original hath or had nothing within the liberties of the said city, by
 which or whereby he can or could be summoned, nor is nor was
 to be found within the same city, and such defendant at that court
 being solemnly called, doth not appear, or hath not appeared, but
 makes or hath made default, and in the same court it be or hath
 been testified or notified to the same court by the plaintiff in the
 said original bill, that any other person be or hath been indebted to
 any such defendant in any sum of money amounting to the sum of
 the debt in such bill original specified, or any part thereof, then,
 at the petition of such plaintiff, it is and hath been commanded by
 the said court to one of the serjeants at mace and a minister of the
 said court, to attach such defendant in such bill named by such
 sum of money so being in the hands or custody of such other per-
 son,

Custom of the
city of London.

PLEAS IN DISCHARGE.

son, so that such defendant be and appear at the said court, or at the then next court held or to be holden before the said mayor and aldermen as aforesaid, to answer such plaintiff of and in the plea in such his bill original specified; and if such serjeant at mace and minister of the same court, at the same or at the then next court, held or to be holden as aforesaid, return and certify to the said court, such defendant to be attached by such sum of money so being in the hands and custody of such other person, and the same sum in the hands and custody of such other person defendant, so that such defendant in such bill original named be and appear at such same, or the then next court, held or to be holden as aforesaid, to answer such plaintiff in the plea in such bill original specified; and if such defendants at that and three other courts from thence next severally held or to be holden before the mayor and aldermen of the said city as aforesaid, that is to say, at four such courts, be or hath been solemnly called and appears not, or hath not appeared, but makes or hath made default, and such defaults, according to the custom of the said city, be recorded against such person, defendant, after such attachment made as aforesaid, such plaintiff in such bill original named, at every such four courts, in his proper person or by his attorney, appearing and offering himself against such defendant in the plea in such bill originally specified, according to the custom of the said city, then, at the last of such four courts, or at any court held or to be holden as aforesaid, after such four defaults recorded as aforesaid, at the petition of such plaintiff in such bill original named made to the said court, it is and hath been used for the said court to command such, or any other serjeant at mace and minister of the said court, to warn such other person, according to the custom of the said city, to be and appear at any court afterwards to be holden before the mayor and aldermen for the time being as aforesaid, to shew if any thing he hath or know of to say for himself, why such plaintiff in such bill original named ought not to have execution of such sum so attached as aforesaid; and if at such court such serjeant at mace return and certify to the same court, such other person in whose hands such sum of money is or hath been attached as aforesaid, to be warned according to the custom of the said city, to be and appear at the same court to shew cause as aforesaid; and if such person so warned, being solemnly called at such court, doth not appear or hath not appeared, but makes or hath made default, then it is, and time immemorial as aforesaid hath been, used and accustomed for the said court to award such plaintiff to have execution of such sum so attached as aforesaid, to satisfy such plaintiff's debt on such bill original specified, or so much thereof as such sum so attached extends or hath extended to satisfy, by sufficient pledges to be found and given by such plaintiff in such bill original named in the same court, according to the custom of the same city, to restore to such defendant such sum of money so attached as aforesaid, if such defendant, within a year and a day from thence next ensuing, come or hath come into the said court holden as aforesaid, and disproves or hath disproved, or avoided the said debt in the said bill original contained,

contained, according to the custom of the said city from time immemorial as aforesaid used and approved, and that after such pledges found and execution had of such sum so in the hands and custody of such other person attached and defended by the plaintiff in such bill original named, such other person, in whose hands or custody such sum is or hath been attached as aforesaid, is and hath been discharged against such defendant of the said sum so attached and had in execution as aforesaid; and such defendant in such original bill named, is and hath been discharged against such plaintiff of such money of his debt in such bill original demanded by such plaintiff, so long as such judgment and execution remain in force and effect, not revoked nor disproved by such defendant; and if such sum of money so attached and defended and in execution, amounts not or hath not amounted to the whole sum of the debt in and by the said bill original demanded by such plaintiff against such defendant, then such plaintiff, by the custom of the said court, is, and from time immemorial as aforesaid hath been used and accustomed to have process against such defendant, according to the custom of the said city, for the residue of his said debt, as by him in such bill original demanded: And the said Benjamin and John further say, that the said custom and all other customs of the said city obtained and used in the same city, during all the time aforesaid by authority of a parliament of Richard the Second, late king of England, &c. after the conquest, holden at Westminster in the seventh year of his reign, were ratified and confirmed to the then mayor and commonalty and citizens of the said city and their successors: And the said Benjamin and John further say, that one Thomas Garner and Joseph Ashmore of London, merchants, before the day of exhibiting the bill of the said Catharine, Agatha, and Johanna, to wit, on the sixteenth day of July in the nineteenth year of the reign of his present majesty, in their proper persons, came into the king's majesty's court, holden before Samuel Plumbe, esquire, then mayor of the city of London, and the aldermen of the said city, in the chamber of the Guildhall of the said city of London, situate in the parish of St. Lawrence Jewry, in the ward of Cheap, London aforesaid, according to the custom of the said city, and then and there in the same court, by the names of Thomas Garner and Joseph Ashmore, affirmed a certain bill original against the widow of Clasper Tamm and (a) Moller, in a plea of debt upon demand of six hundred pounds of lawful money of Great Britain, the tenor of which said bill original follows in these words: that is to say, Thomas Garner and Joseph Ashmore, by William Nash their attorney, demand against the widow of Clasper Tamm and Moller, six hundred pounds of lawful money of Great Britain, which they owe to and detain from the said plaintiffs: For that on the fifteenth day of July, in the nineteenth year of the reign of our sovereign lord George the third, at the parish of St. Helen, London, the said defendants, for and in consideration of divers sums of money before that time due and owing from the said defendants to the said plaintiffs, and then in

Customs of London were confirmed by act of parliament of Richard 2d.

Defendants say, that one Thomas Garner and Joseph Ashmore, before the exhibiting of plaintiff's bill, came into the court of the mayor and aldermen.

Affirmed a bill original against the widow of Clasper Tamm and Moller in debt for 600l.

Which bill follows in these words.

(a) One of the defendants in the original attachment.

And said Thomas and Joseph found pledges.

Appointed their attorney and prayed process.

Precepts to one of the serjeants at mace to summon said widow of C. Tamm and Moller.

To appear 16th July.

Same day given to the said Thomas and Joseph.

Serjeant at mace returns *nihil*.

Widow of Claf. Tamm and Moller called and made default.

Notified to same court that defendants were indebted to said widow of Claf. Tamm and Moller in 79l. 9d. which they had in their hands.

arrear and unpaid, granted and agreed to pay to the said plaintiff the said six hundred pounds above demanded, when the same should afterwards be demanded; yet notwithstanding the defendants, although often requested, have not, nor have either of them yet paid to the said plaintiffs, or either of them, the said six hundred pounds above demanded, or any part thereof to the damage of the said plaintiffs twenty shillings, and therefore they bring this suit, &c.: And the said Thomas and Joseph then and there in the same court, according to the custom of the said city, found pledges to prosecute their said original bill, to wit, John Doe and Richard Roe, and then and there appointed in their stead, William Nash, their attorney, against the said widow of Clasper Tamm and Moller, in and upon the said plea of the said bill original, according to the custom of the said city, &c.; and by their said attorney then and there also prayed process to be thereupon made to them against the said widow of Clasper Tamm and Moller, according to the custom of the said city, and it was then and there granted to them, &c. whereupon upon the petition of the said Thomas and Joseph made to the said court by their said attorney, and by virtue of the said bill original, it was commanded by the said court to one Lestock Peacock, one of the said serjeants at mace of the said mayor and aldermen, and a minister of the said court; that he, according to the custom of the said city, should summon by good summoners the said widow of Clasper Tamm and Moller, to be and appear at the same court holden before the said mayor and aldermen as aforesaid, on the said sixteenth day of July, in the said nineteenth year of our sovereign lord king George the third, to answer to the said Thomas and Joseph, of and in the plea in the said original bill specified, and that day was then and there given by the said court to the said Thomas and Joseph in the same plea, &c. whereupon afterwards, to wit, on the same day at the same court the said serjeant at mace, and minister of the same court, according to the custom of the said city returned and certified to the same court, that the said widow of Clasper Tamm and Moller had nothing within the liberties of the said city by which or whereby they could be summoned, nor were they, or was either of them to be found within the said city; and thereupon the said widow of C. Tamm and Moller were then and there solemnly called, and did not, nor did either of them appear, but made default, and thereupon afterwards, to wit, on the same day at the same court, it was testified and notified to the same court by the same Thomas and Joseph, that the said Benjamin and John were then indebted to the said widow of Clasper Tamm and Moller in the sum of seventy-nine pounds and ninepence, which they in their hands and custody there had, and from the said widow of C. Tamm and Moller detained; and the said Thomas and Joseph then and there by their said attorney prayed the said court to command the said serjeant at mace, and minister of the same court, according to the custom of the said city, to attach the said widow of C. Tamm and Moller by the said seventy-nine pounds and ninepence, then being in the hands and custody of the said Benjamin and

and John, to defend according to the custom of the said city, so that the said widow of Clasper Tamm and Moller might be at the then next court of his said Majesty, to be holden before the said mayor and aldermen in the said chamber of Guildhall of the said city, according to the custom of the same city, to answer to the said Thomas and Joseph of and in the plea in the said original bill specified; whereupon at the petition of the said Thomas and Joseph, by their attorney aforesaid to the same court, it was commanded as aforesaid by the same court to the said serjeant at mace, and minister of the said court, that he, according to the custom of the said city, should attach the said widow of Clasper Tamm and Moller by the said seventy-nine pounds and ninepence, being in the hands and custody of the said Benjamin and John, should defend according to the custom of the aforesaid city, so that the said widow of C. Tamm and Moller might be at the next court of his said majesty, to be holden before the said mayor and aldermen on the seventeenth day of July, in the said nineteenth year of his said present majesty's reign, according to the custom of the said city, to answer to the said Thomas and Joseph of and in the plea in their said bill original specified; and that the said serjeant at mace should then certify to the said court what he should do by virtue of the said precept, and the same day was then and there given by the same court to the said Thomas and Joseph in the said plea, at which day, to wit, on the said seventeenth day of July, in the said nineteenth year of his said present majesty, at the said next court of his said majesty, holden before the said mayor and aldermen in the said chamber of the Guildhall of the said city of London, according to the custom of the said city, the said Thomas and Joseph, by their said attorney, came and appeared, &c.; and the said serjeant at mace then and there returned and certified to the same court, that he, according to the custom of the said city, on the sixteenth day of April, in the nineteenth year of the reign of his said present majesty, between the hours of and in the afternoon of the same day, by virtue of the said precept had attached the said widow of Clasper Tamm and Moller by the said seventy-nine pounds and ninepence, then being in the hands and custody of the said Benjamin and John, according to the custom of the said city, and the said seventy-nine pounds and ninepence so being in the hands and custody of the said Benjamin and John, and defended according to the custom of the said city, so that the said widow of Clasper Tamm and Moller might be then and there at the same court, to answer to the said Thomas and Joseph of and in the plea in the said original bill specified as before commanded; whereupon in the same court of his said majesty then holden before the said mayor and aldermen, in the said chamber, at the Guildhall of the said city, on the said seventeenth day of April, in the said nineteenth year of the reign of his present majesty, according to the custom of the said city, the said Thomas and Joseph, by their said attorney, offered themselves against the said widow of Clasper Tamm and Moller, in the said plea in the said original bill specified,

Thomas and Joseph prayed an attachment against widow of C. Tamm and Moller by said 79l. 9d. to defend, and be at the then next court. It was commanded said serjeant, that he should attach, &c.

To be at the next court on 17th July.

Same day given to said Thomas and Joseph.

Said serjeant at mace returned that he had attached, &c.

Whereupon the said Thomas and Joseph offered themselves against said widow of Clasper Tamm and Moller.

Widow of Cla^s.
Tamm and
Moller made
first default.

Day was given
to said widow
of Cla^s. Tamm
and Moller un-
til next court,
19th July.

Same day was
given to said
Thomas and
Joseph.

Said Thomas
and Joseph ap-
peared at the
next court, and
offered them-
selves against
said widow of
Clasper Tamm
and Moller.

Said widow of
Cla^s. Tamm and
Moller made
second default.

Further day
given until next
court.

Same day given
to said Thomas
and Joseph.

Said T. and J.
appeared at the
then next court,
and offered
themselves a-
gainst said wi-
dow of Clasper
Tamm and
Moller.

cified, according to the custom of the said city; and the said widow of C. Tamm and Moller, at the petition of the said Thomas and Joseph, by their attorney, then and there made at the same court, were solemnly called but did not appear, but then and there made their first default, which said default was recorded upon the said widow of C. Tamm and Moller at that court, in the said plea in the said bill original specified, according to the custom of the said city; and thereupon according to the custom of the said city, a day was then given by the said court to the said widow of C. Tamm and Moller, until the next court of his present majesty, to be holden before the said mayor and aldermen, in the said chamber of the said Guildhall of the said city, on the nineteenth day of July, in the said nineteenth year of the reign of his present majesty, according to the custom of the said city; and the same day was then and there given by the said court to the said Thomas and Joseph in the same plea, &c. at which said next court of his said majesty, holden before the said mayor and aldermen, in the same chamber of the Guildhall of the same city, on the said nineteenth day of July, in the said nineteenth year of the reign of his present majesty, according to the custom of the said city, the said Thomas and Joseph, by their aforesaid attorney, appeared; and then and there in the said court offered themselves against the widow of Clasper Tamm and Moller, of and in the said plea in the said original bill specified, according to the custom of the said city; and the said widow of Clasper Tamm and Moller, at the petition of the said Thomas and Joseph, and then and there made in the same court, were solemnly called but did not appear, but then and there made a second default, which said second default was recorded upon the said widow of C. Tamm and Moller at the same court, in the said plea in the said bill original specified, according to the custom of the said city, a day was then and there given by the same court to the said widow of Clasper Tamm and Moller until the next court of his present majesty, to be holden before the said mayor and aldermen in the said chamber of the said Guildhall of the said city, on the twentieth day of July in the said nineteenth year of the reign of his said present majesty, according to the custom of the said city: and the same day was then and there given by the said court to the said Thomas and Joseph in the same plea, &c. at which said next court of his said present majesty, holden before the said mayor and aldermen, in the said chamber of the Guildhall of the same city, on the said twentieth day of July, in the said nineteenth year of the reign of his said present majesty, according to the custom of the said city, the said Thomas and Joseph, by their said attorney, appeared, and then and there in the same court offered themselves against the said widow of Clasper Tamm and Moller, in the said plea in the said original bill specified, according to the custom of the said city; and the said widow of Clasper Tamm and Moller, at the petition of the said Thomas and Joseph then and there made in the same court, were solemnly called and did not appear,

appear, but then and there made a third default, which said third default was recorded upon the said widow of Claſper Tamm and Moller at the ſame court, in the ſame plea in the ſaid bill original ſpecified according to the cuſtom of the ſaid city, a day was then and there given by the ſame court to the widow of the ſaid Claſper Tamm and Moller until the next court of his preſent majeſty, to be holden before the ſaid mayor and aldermen in the ſaid chamber of the ſaid Guildhall of the ſaid city, on the twenty-second day of July, in the nineteenth year of the reign of his ſaid preſent majeſty, according to the cuſtom of the ſaid city, the ſame day was then and there given by the ſaid court to the ſaid Thomas and Joſeph, in the ſame plea, &c. at which ſaid next court of his ſaid majeſty, holden before the ſaid mayor and aldermen in the ſaid chamber of the Guildhall of the ſame city, on the ſaid twenty-second day of July, in the ſaid nineteenth year of the reign of his ſaid preſent majeſty, according to the cuſtom of the ſaid city, the ſaid Thomas and Joſeph, by their ſaid attorney, appeared, and then and there in the ſame court offered themſelves againſt the ſaid widow of Claſper Tamm and Moller, of and in the ſaid plea in the ſaid original bill ſpecified, according to the cuſtom of the ſaid city, and the ſaid widow of C. Tamm and Moller, at the petition of the ſaid Thomas and Joſeph then and there made in the ſame court, were ſolemnly called and did not appear, but then and there made a fourth default, which ſaid fourth default was recorded upon the ſaid widow of Claſper Tamm and Moller at the ſame court, in the ſaid plea in the ſaid bill original ſpecified, according to the cuſtom of the ſaid city in form aforeſaid, to wit, at the court of the ſaid lord the king, holden before the ſaid mayor and aldermen in the ſaid chamber in the Guildhall of the ſaid city, the twenty-second day of July, in the ſaid nineteenth year of the reign of his ſaid preſent majeſty, at the petition of the ſaid Thomas and Joſeph made to the ſaid court, by their ſaid attorney, it was then and there by the ſame court commanded to the ſaid ſerjeant at mace, that he, according to the cuſtom of the ſaid city, ſhould warn and make known to the ſaid Benjamin and John to be and appear in the ſaid court to be holden before the ſaid mayor and aldermen, in the ſaid chamber of the Guildhall of the ſaid city, on Monday the eleventh day of October, in the nineteenth year of the reign of our ſovereign lord king George the third, at in the forenoon, according to the cuſtom of the ſaid city, to ſhew cauſe, if any thing they had, why the ſaid Thomas and Joſeph ſhould not have execution againſt them for the ſaid ſum of ſeventy-nine pounds and ninepence, in monies numbered theretofore attached in their hands as the proper monies of the ſaid widow of Claſper Tamm and Moller; and that the ſaid ſerjeant at mace ſhould then certify to the ſame court what he ſhould do by virtue of the ſaid precept, and the ſame day was then and there given by the ſame court to the ſaid Thomas and Joſeph, to be there, &c. on which ſaid day at the court of the ſaid lord the king, holden before the ſaid mayor and aldermen, in the ſaid chamber of the ſaid Guildhall of the ſaid city, according

Said widow of C. Tamm and Moller made a third default.

Further day given until the next court.

Same day given to ſaid Thomas and Joſeph.

Thomas and Joſeph appeared at the then next court, and offered themſelves againſt ſaid widow of Claſper Tamm and Moller.

Widow of Claſ. Tamm and Moller made a fourth default.

Scire facias to defendants to ſhew cauſe why ſaid Thomas and Joſeph ſhould not have execution of ſaid 79l. 9d. theretofore attached in their hands.

Serjeant at mace
returned *scire*
facias.

Defendant did
not appear, but
made default.
Thomas and
Joseph prayed
execution.

Judgment that
said Thomas and
Joseph should
have execution
of said 79l. 9d.
by two sufficient
pledges to re-
store same.

And that said
Thomas and
Joseph should
have process a-
gainst said wi-
dow of Claſper
Tamm and
Moller for the
reſidue.
Said Thomas
and Joseph
found ſufficient
pledges to re-
ſtore, &c.

And ſaid Tho-
mas and Joseph
had execution
for ſaid 79l. 9d.
ſo attached, &c.

As by the re-
cord, &c.

ing to the cuſtom of the ſaid city, on the ſaid eleventh day of October, in the nineteenth year of the reign of the ſaid lord the preſent king, the ſaid Thomas and Joſeph, by their ſaid attorney, came and appeared; and the ſaid ſerjeant at mace then returned and certified to the ſaid court, that he, by virtue of the ſaid precept to him directed, had warned and made known to the ſaid Benjamin and John to be and appear in the ſaid court, there to be holden, &c. to ſhew cauſe as to him above was commanded; whereupon at the petition of the ſaid Thomas and Joſeph, made to the ſaid court by their ſaid attorney, the ſaid Benjamin and John were then and there ſo ſolemnly demanded, and did not appear, but made default, and thereupon the ſaid Thomas and Joſeph, by their ſaid attorney, then and there in the ſame court, according to the cuſtom of the ſaid city, prayed execution of the ſeventy-nine pounds and ninepence, ſo attached in the hands and cuſtody of the ſaid Benjamin and John as aforeſaid, to be adjudged to them according to the cuſtom of the ſaid city, &c.; therefore on the ſaid eleventh day of October, in the ſaid nineteenth year of the reign of his ſaid preſent majeſty, at the ſame court, and there held according to the cuſtom of the ſaid city, it was conſidered by the ſame court that the ſaid Thomas and Joſeph ſhould have execution of the ſaid ſeventy-nine pounds and ninepence, in monies numbered ſo attached as aforeſaid, by two ſufficient pledges to be found and given by them the ſaid Thomas and Joſeph in the ſame court, according to the cuſtom of the ſaid city, to reſtore to ſaid widow of Claſper Tamm and Moller within one year and one day then next enſuing, according to the cuſtom of the ſaid city, ſhould come into the ſaid court and diſprove or avoid the ſaid debt, in and by the ſaid original bill of the ſaid Thomas and Joſeph demanded, and that the ſaid Thomas and Joſeph ſhould have proceſs againſt the ſaid widow of Claſper Tamm and Moller for the reſidue of the ſaid debt in the ſaid bill original ſpecified, &c.: And thereupon the ſaid Thomas and Joſeph at that court holden before the ſaid mayor and aldermen in the ſaid chamber of the Guildhall of the city, on the eleventh day of October, in the ſaid year of the reign of his ſaid preſent majeſty, according to the tenor of the ſaid judgment, and the cuſtom of the ſaid city, found ſufficient pledges, to wit, Thomas Taylor, and George Midlane, citizens of the ſaid city, to reſtore to the ſaid widow of Claſper Tamm and Moller the ſaid ſeventy-nine pounds and ninepence ſo attached as aforeſaid, if the ſaid widow of Claſper Tamm and Moller ſhould, within a year and a day then next coming, come into the ſaid court and diſprove or avoid the ſaid debt in and by the ſaid bill original demanded, according to the cuſtom of the ſaid city, and thereupon the ſaid Thomas Garnor and Joſeph in the ſame court, and by the conſideration of the ſame court, according to the tenor of the ſaid judgment, and the cuſtom of the ſaid city, had execution for the ſaid ſeventy-nine pounds and ninepence ſo attached as aforeſaid, and thereof in the ſame court acknowledged to be ſatisfied, &c. as by the record and proceſs thereof remaining in his ſaid majeſty's court,

court, holden before the said mayor and aldermen in the said chamber of the Guildhall of the said city more fully appears; and the said Benjamin and John farther in fact say, that the said seventy-nine pounds and ninepence so attached in their hands, and in execution had at the suit of the said T. Garner and Joseph, according to the custom of the said city, and the said seventy-nine pounds and ninepence, parcel of the said several sums of money in the said several promises and undertakings in the said declaration of the said Catharine Agatha Tamm widow, Johanna Berend Moller above mentioned, are one and the same sum of money, and not other or different sums; and the said Benjamin and John, in the said original bill and attachment, and the said Benjamin and John in the said declaration above-named, are the same persons and not other or different persons; and also, that the said widow of Clasper Tamm and Moller, named defendants in the said original bill prosecuted at the suit of the said Thomas Garner and Joseph, and the said Catharine Agatha Tamm, widow, and Johanna Berend Moller, named plaintiffs in the above declaration, are the same persons, and not other or different, and that the said judgment and execution still remain in full force and effect, in nowise disproved or revoked by the said Catharine Agatha Tamm widow, and Johanna Berend Moller; and this the said Benjamin and John are ready to verify: wherefore they pray judgment if the said Catharine Agatha Tamm widow, and Johanna Berend Moller, ought to have their aforesaid action thereof maintained against them, &c.

Said 79l. 9d. so attached, and said 79l. 9d. parcel of said several sums in said several promises mentioned are the same.

Said Benjamin and John in said original bill and attachment and said defendant are same persons.

Said judgment and execution still remain in full force.

THO. DAVENPORT.

See Lutw. 995. 984. 3. Will. 297. See Vol. II. p. 162, Custom of London
Black. 384. 3. Lev. 23. Latch. 108. set out, in a declaration where goods had
Priv. Lond. 213. Moore, 570. Stra. 641. been attached in the hands of a garnishee.

Hilary Term, 37. Geo. 3.

ANNEN

at the suit of

ANNIS, EXECUTOR.

AND the said James comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said John, executor as aforesaid, hath above thereof complained against him: and of this he putteth himself upon the country, &c.: and for further plea in this behalf the said James, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said John ought not to have or maintain his aforesaid action thereof against the said James, because he says, that the said Nicholas Louis, the testator in the said declarations mentioned, before and at the time of the making of the said several supposed promises and undertakings in the said declaration mentioned, was an alien enemy born in parts beyond the seas, to wit, in the island of St. Domingo in the West Indies, under the dominion of, and subject to the persons exercising the powers of government in France, enemies to our sovereign lord the now king of Great Britain, and born of parents adherents to the enemies of our said sovereign lord the now king; and that the said Nicholas Louis came here into England without the safe conduct of

Plea, that plaintiff is an alien enemy, and a prisoner of war taken fighting on the side of persons exercising the power and government of France.

of our said lord the king, to wit, at London aforesaid in the parish and ward aforesaid; and this he the said James is ready to verify: wherefore he prays judgment if the said John ought to have or maintain his aforesaid action thereof against him, &c.: And for further plea in this behalf he the said James, by like leave of the court here for this purpose first granted, according to the form of the statute in such case made and provided, says, that the said John ought not to have or maintain his aforesaid action thereof against the said James, because he says, that long before, and at the time of making the said several supposed promises and undertakings in the said declaration mentioned, there was and yet is open war between our said lord the king and the persons exercising the powers of government in France, in which war the said Nicholas Louis before the making of the said several supposed promises and undertakings, or of any of them, to wit, on the thirtieth day of July in the year of our lord 1794, at and in parts beyond the seas, to wit, at Guadaloupe in the West Indies, that is to say, at London aforesaid, in the parish and ward aforesaid, was taken prisoner at war, fighting on the side of the persons exercising the powers of government in France against the forces of our said lord the king, by certain of the said forces of our said lord the king; and the said Nicholas Louis, being so taken prisoner, was afterwards sent prisoner of war to England without the safe-conduct of our said lord the king: And the said James further says, that the said Nicholas Louis so remained and continued such prisoner of war to our said lord the king continually from the time of such his captivity at the time of making the said several promises and undertakings in the said declaration mentioned, and to the day of his death, to wit, at London aforesaid in the parish and ward aforesaid; and this he the said James is ready to verify: wherefore he prays judgment if the said John ought to have or maintain his aforesaid action thereof against him,

THO. BARROW.

Vide Wills against Williams, 1. Ld. Raym. 282.

Replication,
came to England
under the safe
conduct and under
the licence
and protection
of the king of
Great Britain.

And the said John, as to the said plea of the said James by him first above pleaded, and whereof he hath put himself upon the country, doth so likewise; and as to the plea of the said James by him secondly above pleaded, the said John says, that he, as executor as aforesaid, by reason of any thing by the said James above in that behalf alledged, ought not to be barred from having and maintaining his aforesaid action thereof against him, because he says, that true it is that the said Nicholas Louis, the testator in the said declaration mentioned, was an alien born in parts beyond the seas, to wit, in the said place in the said plea in that behalf mentioned, under the dominion of and subject to the persons exercising the powers of government in France, and born of parents adherents to the enemies of our said lord the king for replication, nevertheless in this behalf the said John says, that the said Nicholas Louis, in his lifetime, before and at the time of making the said several promises and undertakings in the said declaration mentioned,

tioned,

tioned, and from thence until the time of the death of the said Nicholas, was living by the licence of our sovereign lord the now king, under the government and protection of our said lord the king, and came to England under the safe conduct of our said lord the king, to wit, at London afore said in the parish and ward afore said; and this he the said John is ready to verify: wherefore he prays judgment of his damages by reason of the non-performance of the said several promises and undertakings above-mentioned to be adjudged to him, &c.: And as to the plea of the said James by him lastly above pleaded, the said John says, that he, by reason of any thing by the said James above in that plea alledged, ought not, as executor as afore said, to be barred from having and maintaining his afore said action thereof against the said James, because he says, that true it is that before and at the time of making the said several promises and undertakings in the said declaration, there was and yet is open war between our said lord the king and the persons exercising the powers of government in France for replication nevertheless in this behalf the said John says, that the said Nicholas Louis, in his lifetime, and before the making of the said several promises and undertakings in the said declaration mentioned, was under the protection of our sovereign lord the now king, and came to England under the safe conduct of our said lord the king, and from thence to the time of his death was in this kingdom, by the licence, and under the protection of our said lord the king, to wit, at London afore said in the parish and ward afore said; without this, that the said Nicholas Louis, before the making of the said several promises and undertakings, or at any time after, was taken prisoner fighting on the side of the persons exercising the powers of government in France, against the forces of our said lord the king, by certain of the said forces of our said lord the king, and that the said Nicholas remained and continued prisoner of war to our said lord the king continually from the time of making the said several promises and undertakings in the said declaration mentioned, to the day of the death of him the said Nicholas Louis, or during any part of that time; and this the said John is ready to verify: wherefore he prays judgment and his damages, by reason of the non-performance of the said several promises and undertakings above-mentioned, to be adjudged to him, &c.

ANNEN
at the suit of } *¶* And the said James, as to the said
ANNIS, EXECUTOR. } plea of the said John by him above pleaded
by way of reply to the said plea of the said
James by him secondly above pleaded in bar, says, that the said
Nicholas Louis, in his lifetime, before and at the time of making
the said several supposed promises and undertakings in the said
declaration mentioned, and from thence until the time of his
death, was not living under the licence of our sovereign lord the
king, under the government and protection of our said lord the
king, and did not come to England under the safe conduct of our
said lord the king, in manner and form as the said John hath above

Rejoinder, did
not come to Eng-
land under the
safe conduct, &c.

Venire.

in his said replication in that behalf alledged; and of this he the said James puts himself upon the country, &c.: And he the said James, as to the said plea of the said John by him above pleaded, by way of reply to the said plea of the said James by him lastly above pleaded in bar as before, says, that the said Nicholas Louis, before the making of the said several supposed promises and undertakings, was taken prisoner fighting on the side of the persons exercising the powers of government against the laws of our said lord the king, by certain of the said forces of our said lord the king, and that the said Nicholas remained and continued a prisoner of war to our said lord the king continually from the making of the said several supposed promises and undertakings in the said declaration mentioned till the day of his death; and this he the said James puts himself upon the country, &c. and the said John doth the like: therefore, as well to try this issue as the said other issue above joined between the said parties, let a jury come before our lord the king at Westminster, on next after , by whom, &c.; and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.

THO. BARROW.

(a) Court of conscience act for Westminster, 23. Geo. 2. c. 27. f. 8. pleaded.

ACTIO NON; because he saith that the said plaintiff commenced his said action in the said court of our said lord the king, before the king himself here, against the said defendant after the first day of May, A. D. 1750, mentioned in a certain act of parliament made in the twenty-third year of the reign of our late sovereign lord George the Second, late king of Great Britain, &c. intituled, "An Act for the more easy and speedy Recovery of small Debts within the City and Liberty of Westminster and that part of the Duchy of Lancaster which adjoineth thereto," and that the said defendant, at the time of the commencement of the said action, was an inhabitant and resident within the said city and liberty of Westminster, and was by the said act liable to be warned and summoned before the court of requests in the said act mentioned and directed to be held in and for the said city and liberty of Westminster and that part of the duchy of Lancaster which adjoineth thereto: And the said defendant further saith, that he was not at the time of the commencement of the said action as aforesaid, indebted to the said plaintiff in any sum or sums of money amounting to the sum of forty shillings; and this, &c.; wherefore, &c.

R. DRAPER.

(a) Court of Requests Act for Westminster must be pleaded, Taylor v. Blair, 3. T. R. 452.

Replication to the last plea, that defendant was indebted in 40s. and upwards.

Precludi non; because, protesting as to the sufficiency of the plea; for replication in this behalf the said plaintiff saith, that the said defendant, at the time of the commencing of the said action, was and still is indebted to the said plaintiff by reason of the several promises and undertakings aforesaid, in the sum of forty shillings and upwards, to wit, at Westminster aforesaid; and this he prays may be enquired of by the country, &c.

Drawn by MR. WARREN.
INDEX.

I N D E X.

GENERAL DIVISIONS OR HEADS, AND LEADING TITLES IN THE CIVIL DIVISION.

PLEAS IN ASSUMPSIT.

I. IN DENIAL AND AVOIDANCE.

1. IN DENIAL
2. IN DENIAL and AVOIDANCE } (45).
 1. COVERTURE. (46)
 2. DURESS. (47)
 3. INFANCY. (48)
 4. FRAUD
 5. GAMING
 6. USURY
 7. OTHER STATUTES
 8. OTHER PLEAS, &c. in AVOIDANCE. *See*
OTHER PLEAS in DENIAL, AVOIDANCE,
and DISCHARGE, *infra*.

II. IN DISCHARGE.

1. ACCORD AND SATISFACTION. *See* Payment, *infra*.
2. ACCOUNT STATED.
3. ANOTHER ACTION DEPENDING.
4. ARBITRAMENT.
5. FOREIGN ATTACHMENT.
6. JUDGMENT RECOVERED.
7. OUTLAWRY.
8. PAYMENT. *See* Accord and Satisfaction, *supra*.
9. PERFORMANCE.
10. RELEASE.
11. SATISFACTION *See* Accord, &c. and Pay-
ment, *supra*.
12. SET-OFF.
13. TENDER.

14. STATUTES PLEADED.

1. Bankruptcy
15. 2. Court of Conscience Acts
16. 3. Insolvent Debtors Acts
17. 4. Limitation

III. Other PLEAS in DENIAL, AVOIDANCE, or DISCHARGE.

IV. PLEAS by and against EXECUTORS and ADMINISTRATORS.
REPLICATIONS, REJOINDERS, &c. follow their respective Pleas.

Pleas, 1st. in Denial, 2d. in Avoidance. (45.)

See ANALYSIS.—Index to Vol. II.

Vol.

I.

Page

400. Plea of *non assumpsit*.

334. Plea, *non assumpsit*, suggestion of the death of one of the
plaintiffs, *similiter* by survivor.

S 2

101. Plea

VOL.

I.

Page

PRECEDENTS IN
BOOKS of PRACTICE,
REPORTERS, &c.

101. Plea (to declaration on a wager, whether A. had become bail for B. in a cause then pending in the marshal's court), that he A. never did become bail.
122. Plea (to declaration on a feigned issue to try a right of common), that plaintiff was not entitled to such right of common.
134. Plea (to declaration on feigned issue to try whether there was any consideration for a promissory note, &c.) that there was a consideration.
130. Plea (to declaration on a feigned issue *deviseavit vel non*) that testator died seised, &c. and did devise, &c. *venire*.
138. Plea to declaration in the exchequer of pleas, (*damnificatus vel non præter*) &c. *plea non damnificatus præter*, forty pounds.
139. Plea (to declaration on a feigned issue to try bankrupt *vel non*), that defendant was not indebted in one hundred pounds.
313. Plea that defendant did not undertake to some Counts, demurrer to two first Counts.

VOL.

II.

Page

141. Plea *non assumpsit* and *venire*.

Non assumpsit,

Plea of *non assumpsit* and issue,

Plea of *non assumpsit*; replication to the general issue,

Plea *non assumpsit* by two defendants and issue; judgment by *nil dicit* against a third defendant; *unica taxatio venire ad triand. quam ad inquirend.*

1. R. Pr. B. R. 179

Morg. 217

1. R. P. C. B. 147, 148.

2. R. P. C. B. 18

2. In Denial and Avoidance. *nt. Coverture.* (46)

VOL.

III.

Page

93. Plea, Coverture.—REPLICATION protesting as to the sufficiency of the plea, protesting also that defendant is not a *feme covert*, for replication that before her cause of action accrued, the defendant ELOPED from her husband, and that the work, &c. was done for her defendant at her request, and on her credit only.
91. REPLICATION (to a plea of coverture in abatement) that defendant eloped from her husband before making
92. the promises, and hath ever since lived in adultery. Demurrer and joinder.
90. Plea, Coverture.—REPLICATION that defendant and her husband lived separate, to wit, the husband in Ireland, and the defendant in England, and that by a deed of separation she had an allowance from the husband to the day of his death. Demurrer thereto. *Kingstead v.*

Lady

VOL.
III.
Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Lady Lanesborough, M. 23. G. 3. and Hill 23. G. 3.
Corbit v. Poelnitz, 1. T. R. 5. Barwell v. Brooks,
24. G. 3.

93. REPLICATION to plea of coverture, admitting the co-
verture, but alledging that defendant lived apart from
her husband, and had a separate maintenance.

Plea of coverture. REPLICATION thereto,

Mor. Pr. 249

Plea that defendant was married to one A. B. who is still alive,
plaintiff *replies*, protesting as to the marriage, that defendant
before action commenced eloped, and lived separate, and
that work was done on her credit only,

2. Bl. Rep. 1079.

2. Durefs in Avoidance. (47.)

VOL.
III.
Page

94. Plea by defendant in custody, durefs of imprisonment
to Count on a bill of exchange; replication that de-
fendant was free and at large.

94. Plea of durefs of imprisonment, where defendant made a

95. promissory note. REPLICATION that defendant was
at large.

REPLICATION of durefs of imprisonment to plea of releas-
rejoinder not imprisoned,

2. R. P. B. R. 58, 59, 60

REPLICATION (to plea of general release), durefs of impri-
sonment. REJOINDER,

2. R. P. C. B. 71.

3. Infancy, (48.)

VOL.
III.
Page

104. Replication to a plea of infancy, that defendant con-
firmed his promise at full age.

99. Plea, 1. by guardian, *non assumpsit*, 2. infancy.

102. Replication to a plea of infancy as to same Count, *ne-
cessaries* for board and lodging, and to the rest *nol.
prof.*

97. Plea to *assumpsit* for money lent, and account stated;
1st, general issue; 2d. infancy; 3d, *non assumpsit*

98. *infra sex annos*. REPLICATION taking issue on first
plea, and to second, confirmatory promises; and

99. issue on the third REJOINDER to replication and con-
firmatory promises.

95. Plea of infancy by guardian, Bower. REPLICATION

96. to all the Counts, except ninth, eleventh, and
twelfth (which were the common money Counts),
that defendant was a lieutenant in the horse guards,
and the articles charged were *suitable to his degree*, as

Vol.

III.

Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

- to the ninth, eleventh, and twelfth Counts, *not* *prof.* REJOINDER taking issue on the replication.
97. REPLICATION to plea of infancy; *not* *prof.* to some Counts; to others, replication that money laid out, &c. were for providing necessities suitable to defendant's degree.
101. Plea of infancy.
99. Plea of infancy by guardian. REPLICATION, necessities. REJOINDER, not necessities.
100. REPLICATION to plea of infancy, that three first Counts were for necessities, *not* *prof.* to the two last. *Infra etatem* pleaded to *assumpsit* for taylor's work. REPLICATION, necessities. REJOINDER, not necessities, 1. R. P. B. R. 191, 192, 193
- Plea of *non assumpsit* and infancy by guardian. REPLICATION, necessities. REJOINDER, not necessities, and issue, Lill. Ent. 107. 221, 222, 223
- Plea (to a declaration on several promises against Harriet Ford, defendant, by the name of Ann White, who is sued by the name of Harriet Ford), of infancy. Special demurrer, 2. Willf. Rep. 413
- Plea of *infra etatem*. REPLICATION and REJOINDER, 1. R. P. C. B. 153
- Plea of infancy by guardian, Pl. Aff. 450
- Infancy pleaded by guardian, 3. Willf. 413
- Plea of infancy to *assumpsit*, for merchandizes bought by the defendant; replication, necessities for defendant and his wife; rejoinder, that they were not for necessities, Br. R. 95. Similar plea to action by a taylor, and issue, *Ibid.* 104.
- Plea of non-age for wares sold; replication, that they were delivered for necessary apparel; rejoinder and issue; demurrer, 2. Bro. 99. Br. R. 93. 104. *Vid.* 40.
- Plea of infancy to *assumpsit* by a taylor; replication, necessary garments; rejoinder and issue, *Vid.* 40. Brownl. Red. 104.

Statutes pleaded in Avoidance, (49.)

4. Of 1st. Fraud.

Vol.

III.

Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

102. Plea of statute of frauds, 29. Car. 2. c. 3.
- Plea of statute of frauds, that there was no memorandum in writing, 2. R. P. C. B. 24

5. Of 2d. Gaming.

Vol.

III.

Page

103. Plea of statute of gaming (9. Ann. c. 1.) to an action on an indorsed note, that plaintiff and de-

fendant

IN THE CIVIL DIVISION.

v

VOL.
III.

Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

104. fendant played at cards. REPLICATION, that the note was given for money *bonâ fide* lent, and traverses the gaming consideration. REJOINDER, taking issue on the traverse.
105. Plea to the second Count of a declaration *non assumpsit*, (to the first, which was upon a *promissory note* by indorsee *v.* drawer), the statute against gaming. REPLICATION, that the note was given for a fair debt, and traversing its being given for money won at play, rejoinder and issue. Mor. Pr. 229, 230, 231
- Plea to *assumpsit* on a *bill of exchange* against the acceptor; general issue to second, third, and fourth Counts, plea to the first protesting neither plaintiff or defendant were merchants; for further plea, 14. Car. 2. bill given for money lost at hazard. Demurrer and rejoinder, *venire* to try the issue and assents the damages, if judgment for plaintiff on the demurrer, 32. Raym. 4 edit. 96
- Plea to second, third, sixth, and seventh promise; *non assumpsit* to the first; statute of gaming to fourth, that he lost above one hundred pounds to plaintiff at hazard; to fifth, true that he made such promises, but that he played and lost the sum of one hundred pounds, not then paid by him; replication, protesting as to first promise, did not play; for plea, that the *note and bill* were made for money lent to the defendant, and traverses that he lost above one hundred pounds at one time; to fourth, that he won only sixty-one pounds; to fifth, the same, *Clift.* 200, 201.

6. Of 3d. Usury.

VOL.
III.

Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

105. Plea of Statute of usury (12. Ann. st. 2. c. 16.) to an action on a promissory note, payee *v.* maker.
107. Plea of statute of usury (12. Ann. st. 2. c. 16.) to an action on an indorser bill, at suit of indorsee *v.*
108. indorser. REPLICATION, that the consideration was *bonâ fide*, and traverses the usury.
- Plea, *non assumpsit* to second and third promises; the statute of usury to the first promise being on a *promissory note* indorser, 2. R. P. C. B. 65
- Plea to *assumpsit* for money lent, that it was advanced, and defendant paid for the loan thereof at usurious interest, Lill. Entr. 113

7. Other Statutes pleaded.

(13. 14. Car. II.) ACT OF CONFORMITY.

VOL.
III.

Page

110. Plea to declaration by Curate *v.* Rector, for removing him from his curacy; first, *non assumpsit*; second, that plaintiff did not subscribe the declaration of conformity required by 13. and 14. Car. 2.; third, that

VOL.
III.
Page

112. plaintiff did not procure a certificate under the hand of the bishop, and read the same in the church, as required by the act. REPLICATION that defendant hindered plaintiff from reading, &c. as required, and officiating as curate before the end of three months. (See the Declaration, Vol. II. 508.)

DISCHARGE (50).

1st. Accord, Satisfaction, and Payment. (See Payment.)

VOL.
I.
Page

252. Plea of payment of part of principal and interest due on the bond, and that the acceptor made another bond for payment of the residue, which testator accepted in satisfaction and discharge of the former, and also of the promise and undertaking of defendant; several similar pleas, and that testator accepted bond as a new security. Replication to all the pleas. (See Bills of Exchange Inland. Payee v. Acceptor, Vol. II. Index.)

VOL.
III.
Page

131. Plea, that it was agreed between plaintiff and defendant, that the promises in the declaration mentioned, and the performance thereof should be waived, and defendants should be at liberty to pull down a wall, and in consideration thereof, defendant should pay to plaintiff five pounds five shillings; plaintiff waived promises, and defendant paid plaintiff that sum in satisfaction of the damages to be thereby done for plaintiff. REPLICATION, that true it is that the walls are the same, protesting that plaintiff did not waive, &c. promises, and that defendant did not pay, nor did plaintiff accept said five pounds five shillings in satisfaction of plaintiff's damages; and issue on the agreement.
128. Plea (to a declaration at the suit of assignees of a bankrupt), that after the making the promise mentioned in the declaration, defendant gave the bankrupt a bond in discharge of those promises. REPLICATION, that A. B. (the bankrupt) being insolvent, the bond was given with a fraudulent view to delay the payment of the debt, and to keep the sum from the creditors; stating, that a commission issued, and assignees were chosen.
137. Plea, 1st. *Non assumpsit*; 2d, infancy; 3d, that defendant was indebted to plaintiff in sixty-two pounds and no more, and to one A. B. in two hundred and thirty-eight pounds; and that, at their joint request, he gave them a warrant of attorney to confess a

Vol.
III.
Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

judgment, which *the plaintiff received in full satisfaction* of his debt, and afterwards entered up judgment thereon, which is in full force.

135. Plea, that a bond was delivered in satisfaction in *assumpsit*.

134. Plea, that plaintiff accepted some pieces of cloth in satisfaction. REPLICATION,

135. Plea, that defendant gave plaintiff a mahogany bureau and book-case, which plaintiff accepted in satisfaction and discharge. REPLICATION, did not accept, &c. in satisfaction.

133. Plea of promissory note given for the money due on the promises in the declaration.

136. Plea of an agreement, that defendant should pay plaintiff's creditor a debt due to him from plaintiff, and that it should be deemed a satisfaction from defendant.

Plea of accord and satisfaction after *non assumpsit* to the whole declaration. REPLICATION, protesting no payment and taking issue on the acceptance in satisfaction,

Mor. Pr. 232, 233

Plea, that defendant gave the plaintiff two pieces of cloth in full *satisfaction*, which plaintiff accepted. Replication, protesting that defendant did not give and taking issue upon the acceptance,

Ibid. 233, 234

Plea of delivery and acceptance of one hundred hogheads of tobacco in satisfaction. REPLICATION, that defendant did not deliver special demurrer thereto for not answering the acceptance,

Lill. Ent. 105, 106

Plea to second and third Counts, *non assumpsit*, and to first, an accord by plaintiff to accept a larger sum by instalments, in satisfaction and payment of first installment accordingly. REPLICATION, protesting no payment, and accepting the first installment, denies the accord,

Ibid. 245

Plea in nature of accord and satisfaction, that defendant's creditors (plaintiff one) agreed to accept a composition in lieu of their debts,

2. T. R. 24

Plea as to 1st, promise *payment*, and as to 2d and 3d, acceptance of a note from a third person in satisfaction,

Lill. Ent. 121

Plea as to part, that he gave a bond; and to the residue, *non assumpsit*, *Cl. Aff.* 101.

Plea, that plaintiff accepted a promise of payment of the money from another person, and that he discharged the defendant therefrom. Replication, protesting, &c. for plea that he did not discharge defendant, *Mo. Ent.* 30.

Plea to 1st. promise, *non assumpsit*; to 2d, that plaintiff delivered the goods by agreement to defendant, in the name of a third person, for and in satisfaction of money due to him by the said third person, *3. Instr. Cl.* 269.

Plea, that plaintiff *accepted* of a beaver-hat in discharge of the promise. Replication that he had not delivered it, and issue, *Brown's Va. Ms.* 92.

Plea to action by surgeon, that he so unskilfully managed the wound, and administered medicines, that it became mortified, and plaintiff said he could do no more, defendant *paid* forty shillings, which plaintiff accepted, and traverses deserving more, *3. Instr. Cl.* 349.

Plea,

Plea (to *assumpsit* on bill of exchange) that defendant *paid* the money due, according to the tenor of the bill. Replication and issue, *Tbo.* 16. 2. *Mo. Ent.* 161.

2. Account Stated,

VOL.

III.

Page

139. Plea in *assumpsit* to an action against the acceptor of a bill of exchange, at the suit of an indorsee, that plaintiff and defendants stated accounts concerning the causes of action mentioned in declaration, and defendant was found in arrear, and gave plaintiff a negotiable promissory note for the balance, which plaintiff indorsed away before action brought, whereby defendant is liable to the indorsee. Replication thereto.

Plea as to money borrowed, *non assumpsit*; 2d, as to money due for cattle, *account stated*; to other money due for cattle; that they were partners. Replication and issue, *Bro. Va. Me.* 94.

Plea, that plaintiff and defendant accounted, and ten pounds was due, which he brings into court, 2. *Mo. Ent.* 143.

3. Autre Action Pending.

VOL.

III.

Page

140. Plea (to declaration on a promissory note), another action pending. Replication *nul tiel* record. Rejoinder, *nul tiel* record. Rejoinder to the replication.
142. Plea of prior action depending at the suit of plaintiffs, bankrupts, before they became bankrupts.
143. Plea, that plaintiff obtained a verdict and judgment against the defendant, in a prior action brought by the plaintiff against defendant for the same cause of action.

Plea of another action pending. REPLICATION *nul tiel* record. Demurrer and joinder, -

Plea after special imparlance, another action pending for the same debt. Demurrer and joinder, -

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Ld. Raym. 4. Edit. 57.

Ibid. 53

4. Arbitrament.

VOL.

III.

Page

144. Plea of submission to an arbitration, and an award thereon, &c. REPLICATION *quod nullam fecerunt arbitrationem*.

Plea

IN THE CIVIL DIVISION.

ix

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.
Mor. Pr. 235. 237

Plea of arbitrament; replication no arbitrament, &c.
Plea of submission to an award, by plaintiff and defendant's
pending the first, and a final award thereupon, and performance on defendant's part. REPLICATION taking issue on
the submission to the award and performance, -

Ibid. 308

Plea (to declaration for money due on a protested bill of exchange) an award that
defendant should pay seven hundred pounds, which he did, averring that sum to
be included in the declaration. Replication that it was not within the declaration,
Hanf. 45.

Plea, a submission to arbitration and award, made to pay thirty shillings in satisfaction
of the promise. Replication that he did not submit, and pleads *nul tiel quod*,
3. *Brownl.* 38.

5. Foreign Attachment.

Vol.

III.

Page

247. Plea of *non assumpsit* as to part, as to residue, foreign attachment.

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Plea of foreign attachment in the city of London, stating the
custom, - - - - -

- 2. H. B. C. Rep. 362

Plea of *non assumpsit* to part, and a foreign attachment in London as to the residue.
Replication that the bonds attached were made in S. and not within London. Rejoinder, that one of the bonds was made in London; and judgment for the plaintiff, *Lev. Ent.* 2.

6. Judgment recovered,

Vol.

III.

Page

150. Plea of judgment recovered. Replication and *new*

151. *assignment*, admitting the judgment, but that this action

163. was brought for a different cause. PLEA to the new
assignment; 1st, nonage; 2d, set-off (*See set-off, post.*
163.

146. Plea to *assumpsit* in B. R. of judgment recovered in C. B.
in the same cause of the same term, with declaration.

147. REPLICATION *nul tiel* record. Rejoinder.

145. Plea, by administratrix, of judgment recovered in C. B.
by plaintiff's *baron* and *feme*.

146. 148. Judgment recovered in C. B. to action in B. R.
and replication.

148. Plea of judgment recovered to an action in C. B. Re-

149. plication.

149.

x

INDEX TO LEADING TITLES OR HEADS

Vol.
III.

Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

- 149, 150. Plea of judgment recovered in C. B. Replication
nul tiel record. Rejoinder.
150. Plea of judgment recovered.
146. Replication to a plea of *nul tiel* record, in B. R. record
in the same court.

Plea to an action in B. R. of judgment recovered in C. B.
REPLICATION thereto, -

Mor. Pr. 252, 253
Ibid. 253

- Plea to an action in C. B. a judgment recovered in B. R. -
Judgment recovered in another action pleaded in bar to an
action of *assumpsit*. REPLICATION and rejoinder, -
Plea of recovery in a former action. REPLICATION *nul tiel*
record. REJOINDER *habetur tale recordum*, -
Plea to a recovery in another action, -

1. R. P. C. B. 205

2. R. P. C. B. 19, 20
2. R. P. C. B. 20

7. Outlawry.

Vol.
I.

Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

241. Plea (to declaration on a bill of exchange, drawer *v.*
acceptors, partners, are outlawed), after several im-
parlances; 1st, *nul tiel* record of outlawry; 2d, that
the other defendant resided in Spain, and that Corn-
wall is the next English county; and traverses that
London is. REPLICATION that there is such a re-
cord, setting forth the original writ. Demurrer to the
replication. Joinder.

Vol.
III.

Page

154. Plea of outlawry in C. B. to an action in B. R.
153. Plea of outlawry.

Plea, that defendant is outlawed in another court. REPLICA-
TION *nul tiel* record, -

1. R. P. C. B. 207, 208

Plea of outlawry in plaintiff. REPLICATION, -

2. R. P. C. B. 23

Plea of outlawry in bar. REPLICATION *nul tiel* record, -

Morg. Pr. 224, 225

8. Payment. (See Accord and Satisfaction.)

Vol.
III.

Page

358. Plea to declaration in *assumpsit* on a promissory note;
1st, *non assumpsit*; 2d, *payment* and *acceptance* of a
gross sum in satisfaction; 3d, that defendants with a
surety gave a promissory note to plaintiffs for a sum
in gross, in *satisfaction*, which plaintiff accepted as
such, and which was duly paid. Replication to the
second plea, protesting that defendant did not pay the
money therein mentioned in satisfaction for replica-
tion, says, that plaintiffs did not so receive it.

Plea

IN THE CIVIL DIVISION.

xi

VOL.

III.

Page

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

154. Plea (to declaration in *assumpsit* for work and labour as a builder, and repairing premises), that defendant did employ plaintiff, but that plaintiff employed one A. B. as his deputy, to superintend the works, and that defendant, according to the directions of plaintiff, paid A. B. the money for the work.

Plea to *assumpsit* on articles of agreement to pay a sum of money when the work should be finished; plaintiff only finished part, for which defendant paid him,

Lill. Ent. 449

Plea that he had paid the money according to his promise. Replication that he had not paid, *Mo. Ent. 29. 2. Bro. 6.*

Plea, confesses the promise, but for defence, payment on, and acceptance after the last continuance, *Clift. 203.*

Plea that defendant paid the plaintiff ten pounds in full satisfaction of all debts and demands, which plaintiff received, and traverses any promise made afterwards. Replication that he had not paid, and a promise afterwards, *Bro. R. 93.*

Plea that defendant had paid his moiety of the bargain between him and plaintiff, for goods bought by them jointly, according to his promise. Replication that he had not paid, and issue thereupon, *Re. Dec. 50.*

Plea, payment of five shillings to several promises, in full satisfaction of all promises from beginning of the world to that day, *Bro. Vad. 93.*

Plea that one D. L. being indebted to defendant in twenty pounds, paid the same to plaintiff's mother by the plaintiff's direction. Replication. Demurrer and judgment for the plaintiff, *Bro. Vad. 97.*

Plea to first, second, and third promises, *non assumpsit*; and to the other payment according to his promise, *Bro. Va. Me. 99.* Replication that he had not paid; and issue, *Clift. 102.*

Non assumpsit to 1st, plea to 2d, that he paid so much money, and gave so many goods in satisfaction, *Hansf. 64.*

Plea of payment in full satisfaction, *Cl. Aff. 91.*

Plea by one defendant, that he, together with another, *non assumpsit* by the other, that the plaintiff appointed one P. B. to receive thirty pounds in full satisfaction, *Cl. Aff. 138.*

Payment, plea of, 3. *Brownl. 82. Hern. 130, 135. at several times, 3. Brownl. 56.*

Plea to first promise, payment to second; acceptance of another note in satisfaction, *Lill. Ent. 121.*

Plea in a feigned issue to first promise, that defendant had paid more than he received; to second, that intestate was not indebted to plaintiff, *Lill. Ent. 48. 66.*

Plea, payment for two of the oxen sold, and was ready to have paid for the cow if plaintiff would have delivered her; traversing that plaintiff offered to deliver the cow. Replication, protesting, &c. Plea that he offered to deliver, &c. *Br. Red. 93. 3. Instr. Cl. 270.*

Plea, payment of part, and would have paid the rest if plaintiff would deliver the cattle to him according to his contract. Replication, protesting he had not paid for; plea, that he offered to deliver; and issue, *Bro. Va. Me. 107.*

Plea to action for money had and received, confessing the declaration that he had paid the several sums to W. to the use of plaintiff. Replication and issue, 2. *Bro. 6.*

Plea of payment and acceptance (in *assumpsit*, for the occupation of third part of certain lands. Replication and issue, *Bro. Va. Me. 92.*

Plea,

- Plea, protesting that he made no such promise, and for plea, payment of all weekly assessments and payments whatsoever, chargeable on certain tenements. Replication and issue, *Bro. Va. Me.* 107.
- Plea of payment in discharge for ploughing, &c. Replication, protesting, &c. for plea, did not receive it in full *satisfaction*; and issue, *Ibid.* 110.
- Plea to *assumpsit*; *non assumpsit*, 2. *Brownl.* 8.; and that defendant *paid* all the sums for prosecuting, and monies expended. Replication that he had not paid; and issue, *Ro. Ent.* 56.
- Plea, that he paid plaintiff forty shillings, which was as much as he owed him; and a traverse of the promise. Replication, protesting that he had not paid. 1st plea, that he promised *in modo et forma*; and issue, *Bro. Va. Me.* 108.
- Plea (to *assumpsit* on an indemnity), that he become bound with the plaintiff to the sheriff; who, in default of the appearance of the plaintiff, proceeded to an exigent against the bail and his plaintiff in C. B. and defendant received the monies to give her attorney, to supersede the exigent, and for his journeyes and expences; and traverses the promise to indemnify plaintiff; with issue on the traverse, *Ro. Ent.* 63.
- Plea that plaintiff was not *damified* to *assumpsit* on indemnity, *Hanf.* 118.
- Plea (to *assumpsit* to marry), that he offered plaintiff, but she refused, *Bro. Va. Me.* 90. Replication, issue, and rejoinder.
- Plea (to *assumpsit* on a bill of exchange), protesting, &c. for plea that he drew the bill for the use of C. who being indebted to the king in two hundred pounds, the bill was seized into the king's hands; and defendant, by virtue of a writ of extent, *paid* the money in full *satisfaction*; with proper averments and demurrer thereto, 2. *Vent.* 300.
- Plea (to *assumpsit* on bill of exchange), as to second promise, *non assumpsit*; to first, that plaintiff indorsed the bill to one A. B. and defendant *paid* the money to A. B. who gave a receipt for it, *Clist.* 928.
- Plea of payment, 3. *Brownl.* 82. *Herne*, 130, 135.
- Plea to one promise, that he paid the money to plaintiff on request; and to the other promises, on the feast days, according to the feast-day. Replication and issue, 3. *Brownl.* 56.
- Plea that he *paid* plaintiff, an attorney, the money due to him for fees, expences, and costs. Replication and issue, *Hern.* 197.

9. Performance.

Vol.
III.
Page

355. Plea of performance to a Count in *assumpsit* to make repairs.

10. Release.

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

- | | | | | |
|---|---|---|---|-------------------|
| Plea of release in an action of <i>assumpsit</i> . Replication taking issue on the execution, | - | - | - | 2. R. P. C. B. 70 |
| Plea, a general release. REPLICATION, duress of imprisonment. REJOINDER, | - | - | - | <i>Ibid.</i> 71 |
| Plea of a release, <i>puis darrren continuance</i> , | - | - | - | Bull. N. P. 310 |
| Plea of release, | - | - | - | 2. Ld. Raym. 1306 |

Plea

VOL.
III.
Page.

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

156. Plea that the promises were made by the defendant, and not by the defendants alone, and that plaintiffs executed a release to defendants. Replication, issue on the premises; and *non est factum* to the release.
157. Plea to *assumpsit* by executors, that testator sold to plaintiff a cow for seven pounds; which, at the time of his death, was unpaid, and that plaintiff's executors agreed to *release* each other on condition of plaintiff's paying plaintiff thirteen pounds.

Plea, a general release. REPLICATION, *non est factum*, 2. R. P. B. R. 57

Plea, general release. REPLICATION, duress of imprisonment. REJOINDER, not imprisoned, - *Ibid.* 58, 59, 60

Plea of a geneal release. REPLICATION that defendant, being intoxicated with liquor, sealed and delivered the release. Rejoinder, - - - Mor. Pr. 237, 238, 240

REPLICATION to the plea of a plea of general release, *non est factum*, - - - *Ibid.* 240

Plea of release to a declaration for lodging. *Cl. Aff.* 257.

Plea of general release made *after verdict*, and *before judgment*, *Bro. Vad.* 115.

Plea to first, second, and third promise, that he made them on the tenth of April, and that plaintiff sealed a general release to him on the eleventh; traversing the promise afterwards. Replication that defendant promised after the tenth; and issue, *Bro. Vad.* 98. 105. 111.

Plea of *payment* before original sued out, and plaintiff gave a release thereupon, *Cl. Aff.* 129.

Plea to part *payment*, pursuant to the *award* to residue a *release*. Replication, did not pay; and issue, *Mo. Ent.* 57.; protesting arbitrators made no award for plea, no award was delivered, or ready to be delivered, according to the submission. Replication that the award was made, and ready to be delivered under the hand and seal of the creditor; and issue, 58.

Plea (to *assumpsit* to pay money in consideration of marriage), that plaintiff, after the promise made, discharged defendant by *release* in writing. Replication, *non est factum*; and issue, *Hanf.* 43.

11. Satisfaction. (See Accord and Satisfaction, and Payment Pleas of, *ante.*)

12. Set-off. (See Notices, practical forms.)

VOL.
III.
Page

160. Plea of set-off for work and labour, &c. as a *factor*.
159. 166. Plea of set off, work and labour, &c. done by defendant.
164. Plea of set-off, for work, &c. necessities, damages, goods, money lent. laid out, had and received, account stated. REPLICATION thereto
- 165.

172. Plea

Vol.
III.
Page.

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

172. Plea, general issue and notice of set-off of a promissory note for one hundred pounds for the rent of a house.
168. Plea of set off, work and labour, money lent, &c. laid out, &c. had and received, account stated. REPLICATION taking issue on the set-off.
167. Plea of set off.
170, 171. Plea of set-off.
163. Plea of a recognizance entered into by plaintiff to defendant in another Court by way of set-off.
160. Plea of debt on judgment by way of set-off. Replication, that since the recovery thereof, and plea pleaded, defendant levied the sum due upon it.
162. Replication similar to the last, of payment of the judgment since plea pleaded; and opinion.
163. Plea to new assignment in a replication; 1st, *non assumpsit*; 2d, set off. (See replication to plea of judgment recovered, ante 153, and Index. ix.)
165. Plea of set-off, money due on a judgment recovered by him against plaintiff, as *administratrix*. (See Executors, post.)
166. Plea of *non assumpsit* to all the Counts, except two pounds eleven shillings tender to that, and with leave of the Court, a set-off to all the money except two pounds eleven shillings tendered. (See Tender, post.)

Plea of set-off,

Plea, setting off several sums against plaintiff's demands,
Plea of *non assumpsit* and set-off. REPLICATION that plaintiff was not nor is indebted, &c.

Plea of set-off of a bond from a bankrupt to defendant, to an action brought by the assignees,

Plea to *assumpsit* for work and labour, &c. as an attorney, that plaintiff, before and at the time of the plea pleaded, was indebted to defendant in a larger sum. REPLICATION that defendant brought an action against plaintiff for the same time in which plaintiff has paid the amount of the demand into Court.

Plea to *assumpsit* for work and labour, that plaintiff entered into a bond to defendant to perform work within a certain time, and beyond that time it was conditioned that plaintiff should pay defendant ten pounds every week that the said work remained unfinished, and that four weeks had elapsed, and that forty pounds were due and owing to defendant,

Plea of set-off of bonds of indemnity, to an action for goods sold and delivered by assignees of a bankrupt, and that the monies paid on the bonds exceeded plaintiff's demand,

Plea of set-off of a judgment recovered. REPLICATION that plaintiff was then in the custody at the suit of defendant, and was by him discharged from the execution upon the judgment. REJOINDER that plaintiff executed a war-

2. R. P. C. B. 25;
Ibid. 62

Mor. Pr. 250, 251

1. Will. Rep. 155

3. T. R. 186,

2. T. R. 31

5. T. R. 133

rant of attorney to secure an annuity which was set aside for irregularity,

I. T. R. 557

Plea of set-off to declaration on an *award*, confessing the award, but that before the making the award, plaintiff was indebted to defendant in other sums of money, that he requested the arbitrator to make an allowance of his said debt, but that he made the award without taking into consideration defendant's debt,

1. Mod. Ent. 167,

13. Tender.

VOL.

III.

Page

183. Plea to all the promises (except the third), for money had and received, and all the money therein except ten shillings and sixpence deposit, *non assumpsit* and issue; and as to that ten shillings and sixpence, the deposit a tender; second, as to first and second Counts, that plaintiff exonerated defendant from the performance thereof.
177. REPLICATION to plea of tender, admitting the tender, and taking money out of court.
180. Replication of a subsequent demand and refusal. Rejoinder thereto, and issue.
166. Plea of *non assumpsit* to all the Counts except two pounds eleven shillings; tender to that, and with leave of the Court a *set-off* to all the money except two pounds eleven shillings tendered. (*See Set-off, ante.*)
173. Plea of tender of thirty pounds, to an action brought on an agreement to repair the vicarage-house, by a clergyman.
181. Plea to part judgment against defendant, having neglected to plead as to part of a particular Count, plaintiff takes judgment by *nil dicit* as to that, in order to prevent a discontinuance, *unica taxatio*. REPLICATION to the plea of tender pleaded to a *quantum meruit*, admitting the tender, says, that plaintiff deserved to have more than the sum tendered, to wit, &c. pounds award of *venire*.
182. Plea of tender to the last Count of fifteen guineas, acceptance of the fifteen guineas, and *venire* awarded to try the other issue.
183. Replication to a plea of tender, that no such tender was ever made.
174. Plea of tender, plaintiff takes money out of court; and issue on the remainder.
176. Plea of *non assumpsit* to part, and tender to the residue.
176. Replication, demurs to the tender.
180. Replication to a plea of tender, a bill of Middlesex, with continuances before the making any tender.

VOL. III.

T

Plea

VOL.
III.
Page.

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

181. Plea first, general issue; second, plea of tender.
173. Plea (to declaration for money had and received, and account stated), as to all the promises, &c. except as to one guinea, parcel, &c. *non assumpsit*, and to the guinea, a tender.
179. REPLICATION to a plea of tender, that previous to the making of the tender, plaintiff sued out a writ of *subpoena* in the Court of Exchequer in this suit; and opinion on the replication.
177. REPLICATION to a plea of tender, that plaintiff sued out a bill of Middlesex; with continuances before the tender.

VOL.
II.
Page

- 536, 537, 538, 539. Plea of general issue to part, to residue a tender. Replication, subsequent demand, refusal. Rejoinder and issue; with opinion on the costs.
Plea as to the first part of the second Count; and as to the third promise, *non assumpsit*; as to the residue, a tender, - 2. R. P. B. R. 79
Plea, *non assumpsit* to the whole, and a tender to part. REPLICATION, demurring to the tender; and issue. ENTRY where the plaintiff admits the tender, takes the money out of court, and proceeds for further damages under the general issue. (See Practical Forms, *post*.) - Ibid. 218, 219, 220
REPLICATION to a plea of tender, that plaintiff, after the tender, requested defendant to pay him, but he refused, Mor. Pr. 220
Plea in *assumpsit* to a declaration of E. T. 3. G. 2. and plea same term, of a tender, before the exhibiting the bill. REPLICATION that the plaintiff sued out a *latitat* anterior to the tender. REJOINDER, admits the cause of action accrued before the filing of the bill, but denies that he promised before the *latitat* was issued; general demurrer thereto, - 1. Wils. Rep. 141. 2.
Plea of tender in *assumpsit*. REPLICATION, denying the tender, - 1. R. P. C. B. 155
Plea as to part, *non assumpsit* as to residue, a tender and a notice of set-off delivered with the same plea. (See Practical Forms.) 2. R. P. C. B. 67. 69.
Pleas as to the first, second, fourth, fifth, and sixth promises, and the whole of the third, except six pounds, *non assumpsit*, and as to that, a tender. REPLICATION, accepting the money tendered and award of *venire* to try the issue. (See Practical Forms.) - Pl. Aff. 225, 226
Plea to second, third, fourth, fifth, and part of first promise, *non assumpsit*; and to residue of first, a tender. Replication and issue on the tender, - Lill. Ent: 269. 271
Plea to *assumpsit* in B. R. of general issue to the two last promises, and a part of the money in the first, and to the residue a tender. Acceptance by plaintiff of money tendered out of court, - Ibid. 448
Plea in *assumpsit* to the first, third, fourth, and fifth promises, *non assumpsit*; and to second, that the meat, &c. therein

men-

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

mentioned was worth no more than one pound fourteen shillings, which defendant tendered. REPLICATION there-
to, offering an issue on the value of the goods,
Plea of tender, with an *uncore priſt* to part, and *non aſſumpſit*
to the other part. REPLICATION taking issue on the ten-
der,

Lill. Ent. 453

Ibid. 476

Non aſſumpſit to part, and tender to the reſt, 2. *Mo. Ent.* 143. Replication and
iſſue.

Plea to part, *non aſſumpſit*; and to the reſidue, a tender of money brought into Court.
Replication denying the tender, *Tho.* 60. 66. *Br. Red.* 90. *Cl. Aff.* 104.

Plea to one promiſe *non aſſumpſit*, and to the other, that he had PAID part, and a ten-
der to the reſidue brought into Court, *Br. Red.* 90. 107.

Plea, PAYMENT as to part, and a tender as to the reſidue, and the money brought
into Court, *Bro. Vad.* 103. *Cl. Aff.* 140.

Plea to a promiſe to pay the loſs ſuſtained by carrying away wood that the defendant
offered to pay twenty-fix ſhillings, which was a ſufficient recompence. Replica-
tion, proteſting that he did not offer, for plea that it was not ſufficient, 1. *Bro.* 37.
Aſſumpſit for wares, &c. and *mutuatus* for money had and received, *non aſſumpſit* as to
ſeveral parcels of the money, and tender before the writ purchaſed as to the reſidue,
sout temps priſt. Replication, denying the tender before plaintiff brought his
original, to which plaintiff demurs, *Lev. Ent.* 30. *Br. M.* 107.

Plea, *non aſſumpſit*, *Bro. Red.* 30. Plea of tender of ten ſhillings, for diet and lodg-
ing, as being ſufficient, plaintiff reſuſed, *Bro. Va. M.* 89.

Statutes pleaded in Diſcharge. (51)

1. Bankruptcy.
2. Court of Conſcience Act.
3. Inſolvent Debtors Act.
4. Limitation.

} (51)

VOL.

I.

Page

- 308 Plea to Declaration by an attorney for work and labour,
309 againſt executors: 1ſt, General iſſue after impar-
lance; 2d, *bankruptcy* in plaintiff and his copartner,
with all the proceedings under the commiſſion ſet out.
312 Replication, 1ſt, *noſ. proſ.* to ſome Counts, and iſſue
on others; and as to thoſe that cauſe of action accru-
ed after the aſſignment for the neceſſary ſupport of
313 himſelf and family. Rejoinder, that plaintiff had
314 not obtained his certificate. Demurrer and joinder,
cur. adv. vult—dies datus—venire, *Cooke's Bankrupt*
Law. 2. Ed. 459.

VOL.
III.
Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c,

186. Plea (to a declaration for work and labour), 1st, *non assumpsit*; 2d, that the promises were made by defendant and one A. B. who is since a bankrupt, and that plaintiff was indebted to defendant and A. B. in more money, &c. Replication thereto, and issue on the set off.
189. Plea (to a declaration on a bill of exchange, at the suit of the second indorsee against the acceptor), that the first indorsee, at the time of his indorsing the bill, was a bankrupt, and that defendant is answerable to the assignees of such bankruptcy, 19. Geo. 2. c. 32. s. 1.
185. Replication, that bill was *bonâ fide* negotiated, and plaintiff had notice of the bankruptcy. Rejoinder, that bill was not fairly negotiated, and issue on the notice.
186. Plea of *non assumpsit* and bankruptcy pleaded.
188. Plea of bankruptcy, with notice generally in bar, in conformity to the statute, 5. Geo. 2. c. 30. s. 7.
- Non assumpsit* by two defendants, *non assumpsit* and Bankruptcy by a third, Lill. Ent. 106. REPLICATION, confessing the bankruptcy, but avers that he and the other *super se assumpserunt*; the third makes default, and issue, R. Pr. B. R. 186, 187
- Plea of bankruptcy, and that the cause of action accrued before, 2. Wils. Rep. 264
- Plea of *non assumpsit* and *non assumpsit infra sex annos*, that defendant was a bankrupt, and plaintiff's cause of action accrued before in C. B. 1. T. R. 89. 2. R. P. C. B. 16
- Plea of Bankruptcy, 2. R. P. C. B. 64
- Plea to declaration against three defendants, imparlance; 1st, *non assumpsit* by two; 2d, *non assumpsit* by third, and issue; and for further plea, bankruptcy in defendant after cause of action accrued. REPLICATION, confessing her bankruptcy, but says that all the defendants promised jointly; *dies datus* for defendants to rejoin; and judgment by default for want of rejoinder; and *venire* awarded, as well to try the issues as to enquire the damages on such judgment. (Practical Forms, see) Lill. Ent. 106, 107
- REPLICATION to a plea of bankruptcy in plaintiff to *assumpsit* for monies due on an account stated, that plaintiff by deed assigned the debt sued for, before he became bankrupt, to A. B. for whose use he now sues, 1. T. R. 619
- Plea by three, two *non assumpserunt*, third, by leave of the court, *non assumpsit* and bankruptcy, Lill. Ent. 106.

15. 2. Court of Conscience Act.

VOL.
III.
Page

191. Plea, court of conscience act for London, 3. Jac. 1. c. 15. and 14. Geo. 2. c. 10.

Vol.

III.

Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

258. Plea of court of conscience act for *Westminster*, 23. Geo. 2. c. 27. f. 8. REPLICATION, that defendant was indebted in forty shillings and upwards.
194. Plea of *non assumpsit infra sex annos* to the 1st Count; to the 2d, 3d, and last, *non assumpsit* generally, except as to fifteen pounds and upwards; to the whole of the fourth promise the court of conscience act for the *Tower Hamlets*. Replication thereto, taking issue on the statute of limitations as to the first promise, and as to the plea of court of conscience act, shewing that plaintiff sued defendant in B. R. by bill of Middlesex, and that defendant appeared the *fourth*, &c. and denying that defendant resided within the jurisdiction of the court of conscience, 23. Geo. 2. c. 33.
192. REPLICATION, that defendant was an attorney of C. B. and not liable to be summoned in the county court.
193. Plea, court of conscience act for *Southwark*, (32. Geo. 2. c. 6. to amend and explain 32. Geo. 2. c. 6.)
193. Plea, court of conscience act (5, Geo. 3. c. 8.) for the *hundred of Blackbeath and Bromley*, &c. in Kent.
194. Plea in C. B. *non assumpsit* to the whole, and the jurisdiction of the court of requests for the city of *London* by rule of court, and opinion on the propriety of pleading or suggesting it.
191. Plea of the court of conscience act for *Liverpool*.
195. Plea of court of conscience act for the county of *Middlesex*. 23. Geo. 2. c. 33. Replication that defendant was an attorney of C. B. and not liable to be summoned in the county court. (See Index, *post*. xxii. Other Pleas, &c.)
- Plea by an attorney as to all, except one pound three shillings and eightpence; and as to that sum, that he is liable to be sued in the county court of *Middlesex*. REPLICATION, that an attorney is privileged from being sued there; on demurrer, judgment for plaintiff, 1. Wils. Rep. 42. b.
- Plea, that defendant was not indebted in forty shillings, and the *Southwark* court of requests, 22. Geo. 3. c. 47; and that defendant was resident within the jurisdiction, 2. H. Bl. 351

3. Insolvent Debtors' Acts.

Vol.

III.

Page

197. Plea of duplicate, defendant having been in custody of an officer and surrendered in discharge of bail, &c.
196. Plea of duplicate as a prisoner.
197. Plea of discharge of a prisoner under the compulsive clause of insolvent act, 1. Geo. 3. c. 27. f. 46.
199. Plea of discharge under the act of insolvency as a prisoner
200. in custody. Replication and issue.

VOL.

III.

Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

198. Plea of discharge under an insolvent act, and REPLICATION.

202. Plea of duplicate of discharge under insolvent act as a fugitive.

201. Plea, that plaintiff was discharged under an insolvent act, and his estate and right of action vested in the clerk of the peace.

Plea in *assumpsit* in discharge of execution against the body of an insolvent debtors' act, defendant having been a fugitive. REPLICATION, employment and residence in foreign parts, viz. at St. Helena, as chaplain of the island, in the service of the East India Company, upon a stipend, and not a fugitive. Rejoinder, not so resident,

Mor. Pr. 242, 242. 244

Plea of insolvent debtors' act, defendant having been a prisoner for debt. Replication, not duly discharged,

Ibid. 244. 246

Plea of discharge of insolvent debtor under 21. Geo. 3. defendant being at large upon the destruction of the B. R. prison in June 1780,

Ibid. 246

Plea of insolvent debtors' act, 2. Ann, c. 16. in stay of execution as to his person, and confesses action, but traverses the time of incurring the debt. Demurrer as to person. Joinder as to person, and apparel, and bedding, to the value of ten pounds,

2. Ld. Raym. 1163

Plea, statute of 10. Ann, in discharge of defendant's person only, being a prisoner. Replication, that he was not a true prisoner, and traverses his discharge, Lill. Ent. 108.

4. Limitations, Statutes of.

VOL.

I.

Page

327. Plea, 1st, general issue; 2d, *actio non accrevit infra sex annos*. Replication to 2d plea, that after the said causes of action accrued defendant was in foreign parts beyond the seas, until he returned in 1780, and that plaintiffs, within six years after his return, exhibited their bill. Rejoinder, taking issue.

VOL.

III.

Page

205. REPLICATION to a plea of *non accrevit infra sex annos*, that the plaintiff's testator was *non compos mentis* for a long time before, and at his death, and that the plaintiffs sued out their original writ, within, &c.

205. REPLICATION to a plea of the statute of limitations, that cause of action arose within six years.

204. REPLICATION to *non assumpsit infra sex annos*, that the intestate continued at sea till his death, and that within six years after his decease plaintiffs exhibited a bill

VOL.
III.
Page.

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

at the suit of an *administrator*. REJOINDER, taking issue.

203. REPLICATION to a plea of statute of limitations, that plaintiffs sued out a bill of Middlesex, and promised within six years next before the suing out of the precept.

203. Plea, 1st, general issue; 2d, *non assumpsit infra sex annos*; 3d, set off for goods sold, &c.

VOL.
I.

Page

213. Plea, *actio non accrevit infra sex annos*. REPLICATION, taking issue.

213. Plea of *non assumpsit* and *non assumpsit infra sex annos*.

VOL.
III.

Page

205. REPLICATION to a plea of the statute of limitations, that plaintiff was beyond seas when the action commenced and exhibited, &c. within six years after his former arrival.

203. REPLICATION to a plea of the statute of limitations, that a writ of *latitat* was sued out within six years, the rejoinder admitting the suing out the *latitat*, but denies that he promised within six years.

205. REPLICATION to a plea of statute of limitations, and to action at the suit of plaintiffs, as executors, that their testator sued for the said debt, and proceeded as far as the declaration, and died; whereupon the action was discontinued, and that defendant promised within six years after the suit.

207. Plea, *non assumpsit infra sex annos*. Replication;

208. issue.

209. Replication, *actio non accrevit infra sex annos* to plea of set off.

208. Plea of statute of limitations, *non assumpsit infra sex annos* and set off.

Non assumpsit infra sex annos. Replication, - - 1. R. Pr. B. R. 208

Non assumpsit and *non assumpsit infra sex annos*, - - *Ibid.* 209

REPLICATION of *non assumpsit* and *non assumpsit infra sex annos* to a plea of set off, - - *Ibid.* 208

Actio non accrevit infra sex annos, - - *Ibid.* 209

REPLICATION to a plea of *non assumpsit infra sex annos*, that plaintiff sued out a bill of Middlesex, with continuance by the *non misit breve* to the time of appearance. REJOINDER, *nul tiel record, surrejoinder habetur tale recordum*, - 2. R. P. B. R. 81. 86

Non assumpsit infra sex annos. REPLICATION, that plaintiff undertook within six years, and issue, - Morg. Pr. 217. 218

Plea of *non assumpsit infra sex annos*, REPLICATION there- to. Rejoinder, - - 1. R. P. C. B. 148. 149

Plea, *actio non accrevit infra sex annos*. REPLICATION, *Ibid.* 149

Plea,

Vol.

III.

Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Plea, *non assumpsit* and *non assumpsit infra sex annos*, that defendant was a *bankrupt*, and plaintiff's cause of action accrued before in C. B.

2. R. P. C. B. 16

Plea of statute of limitations. REPLICATION, *latitat* sued out with divers continuances, which were sued out with intent to declare in that action; averment, that the causes of action in the bill and the writ are the same. REJOINDER, taking issue on the *non assumpsit* within six years before the issuing the *latitat*,

Lill, Ent. 32

REPLICATION, a bill of Middlesex sued out, with divers continuances, with *suggestion* of the demise of the king; and that afterwards a *latitat* was sued out and continued; and that the promise was made within six years before bill of Middlesex sued out. (Practical Forms Suggestions.)

Ibid. 104

REPLICATION to plea of statute of limitations, *non assumpsit infra sex annos*, that plaintiff sued out a *latitat* and an *alias capias*, and three pluries thereon; after which the king died, and the defendants appeared before his accession or succession; and plaintiff declared against him in this action, and the cause of action accrued within six years before the issuing of the first writ,

Ibid. 122

Plea of *non assumpsit* and *non assumpsit infra sex annos* in one plea in B. R.

Instr. Cl. 7. Ed. 261

Plea of *non accrevit* action *infra sex annos*. Replication thereto, that the action did accrue within six years, and issue,

Pl. Aff, 451, 452

REPLICATION to plea of statute of limitations, that on, &c. plaintiff sued out a bill of Middlesex, returnable on, &c. that continuances were entered till, &c. but sheriff did not return the precept; but that plaintiff afterwards, on, &c. sued out an attachment of privilege for same cause of action, to which defendant appeared,

3. T. R. 662

Plea, *non accrevit infra sex annos*. REPLICATION, that before the eleventh day of February, 1725, viz. March twenty-fifth, 1720, plaintiff levied a plaint in sheriff's court, which was removed by *habeas corpus*, and that the cause of action is the same. Demurrer with causes, for that the cause of action is not the same,

2. Ld. Raym. 1427

Plea to the first promise, *non assumpsit*, to the second and third *non assumpsit* within six years, *Bro. Vād.* 74. 113.

Plea of statute of limitations, *Mo. Ent.* 142. *Cl. Aff.* 181. *Br. R.* 99. Replication, 104.

Plea of *non assumpsit* within six years. Replication, that the monies were due and payable between merchants in the course of trade. This was bad in *assumpsit*, but otherwise in account, 2. *Sand.* 123.

Plea to first and second promise *non assumpsit infra sex annos*; to third and fourth, *assumpsit* generally. Replication to first and second, an original in trespass, &c. sued out within six years; and that he promised within six years next before the original. Defendant craves *oyer* of the original and hath it, and pleads that the writ will not warrant the declaration. Demurrer and joinder, 2. *Vent.* 155.

Non assumpsit within six years from suing out the original, *Lill. Ent.* 478; similar plea from suing out the bill.

Other

Other Pleas in DENIAL, AVOIDANCE, and DISCHARGE.

Vol.
III.
Page

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

121. Plea that defendant assigned his property for the benefit of his creditors, under an order of the chancellor of Maryland in North America, by virtue of an act of Assembly.
118. Plea, (to declaration for work and labour, &c.) first, *non assumpsit*; second, defendant entered into a deed of composition with his creditors to pay a pound rate in hand, and the remainder in four years, they covenanted not to sue within four years.
114. Plea in bar that one of plaintiffs was partner with defendants, and therefore could not sue.
126. Plea *nil habuit in tenementis* to an action for use and occupation. It is decided this is not a good plea.
127. Plea, that smuggled goods were the consideration of the bill of exchequer. *Qu. if a good plea?*
125. 109. Confession of the action as to part, *non assumpsit* to the residue, with judgment as to the part confessed.
115. 117, 118. Plea (to a declaration on a promissory note, indorsee *v.* the maker) that the plaintiff was tried at B. for murder, and sentenced to be hanged, which judgment is in full force; set off of a promissory note given to plaintiff, and indorsed to defendant. *See set off, ante.* Replication to the last plea, *nul tiel record*; rejoinder to *nul tiel record*, and prays a *certiorari*. *See Criminal division, Certiorari.*

Plea by an attorney, *non assumpsit* as to all except one pound three shillings and eightpence, and as to that sum that he is liable to be sued for it in the county court of M. plaintiff REPLIES that defendant is an attorney, and privileged from being sued there, on demurrer plaintiff had judgment. (*See Index, xix. ante, Courts of Conscience Act.*)

1. Wils. 42. b.

Plea of a special *letter of licence* to an action on the case, brought on the promise, 3. *Inst. Cl.* 273. *Hansf.* 62.

Plea (to declaration in consideration of surrender of a term in plaintiff's shop, defendant would put plaintiff into defendant's shop), that he tendered and plaintiff refused, 3. *Inst. Cl.* 279.

Plea (to an action for not conveying lands) that plaintiff within the time discharged defendant from his promise, and that he sold the lands to another. Replication and issue, *Ra. Ent.* 685.

Non assumpsit, 1. *Bro.* 67. 2. *Bro.* 9. *Mo. Ent.* 27, 28. *Hansf.* 35, 59. *Cl. Aff.* 71. *Lill. Ent.* 56, 57.

Plea, alledging by protestation that he had not accounted nor was indebted; for plea, *non assumpsit*. *Pl. Gen.* 58.

Plea that an agreement was made on condition, and a traverse of the agreement in the declaration. Replication, maintaining the declaration, and an issue on the traverse, *Tbo.* 74.

Plea that the bargain was made upon a condition that the plaintiff was to pay money at such a feast which he had not paid; replication that the bargain was made without a condition, and traverse that it was made on a condition, *Br. R.* 90.

Plea

- Plea that the defendant promised upon such a condition, and a traverse of the promise in the declaration, and replication and issue upon the promise in the declaration, *Ro. Ent.* 97.
- Plea that plaintiff had discharged defendant of his promise, *Clift.* 199.
- Plea that he had left the premises in as good repair as they were at the time of the agreement, and an issue thereon, *Hanf.* 41.
- Plea *non assumpsit* to the last promise, to the first a demurrer, 3. *Lev. Rep.* 149.
- Plea to second promise, *non assumpsit*, to first, a special plea, *Ibid.* 317.
- Plea to *indebitatus assumpsit*, that plaintiff was a *recusant convict*, with an averment that the judgment and record are in full force, plaintiff demurs, *Lev. Ent.* 11. 3. *Lev. Rep.* 4.
- Non assumpsit* pleaded to an action by commissioners of bankrupts, *Lev. Ent.* 15.
- Plea to *assumpsit* for six pounds for a gelding sold, that he bought the gelding on condition that plaintiff, on request should, by note under his hand, promise to repay defendant six pounds if any person should claim property, and avers that he offered the six pounds, but plaintiff refused to subscribe the note, *Bro. Vad.* 95. Replication and issue.
- Plea to first promise, judgment by *non sum informatus*, to the other *non assumpsit*, *Clift.* 103.
- Non assumpsit* by one defendant, *nil dicit* by another, *Cl. Aff.* 84.
- Plea (to an action upon a promise to become bound to the plaintiff for money to be paid at the end of the year, or to pay so much upon demand) that defendant and another offered to seal and deliver a bond, &c. which the plaintiff refused to accept. Replication, that plaintiff requested defendant to pay him the money, which defendant was to pay upon request, 3. *Brownl.* 75.
- Plea (to *assumpsit* for not delivering goods), *non assumpsit* as to part, and to the residue that he had delivered to one C. by the appointment of plaintiff. Replication, that he did not deliver it by his appointment, *Pl. Gen.* 62.
- Plea to *assumpsit* (for not delivering it at a certain time) that plaintiff before the time discharged defendant of his promise. Replication and issue, 1. *Bro.* 67.
- Plea that defendant had pawned the satchel for which the action was brought, till the ten pounds were paid, *Cl. Aff.* 95. *Hanf.* 109.
- Plea that the horse was so sick that he could not deliver him, *Cl. Aff.* 102.
- Plea (to an action brought by a servant) confesses that plaintiff came into his service, and there continued till such a time, during which the testator had plentifully provided for the plaintiff, and that on such a day the plaintiff voluntarily left the testator's service, and traverses that the plaintiff served testator during the whole time in the declaration; special demurrer and judgment for the plaintiff, 1. *Saund.* 265.
- Plea (to *assumpsit* for work, &c.) that plaintiff was not ready to go to Scotland, but refused. Replication maintains the declaration, and traverses that he refused, and issue, 1. *Bro.* 76.
- Plea of *non assumpsit* to an award, and verdict for plaintiff, *Wi. Ent.* 471.
- Plea that defendant was retained to be attorney for the plaintiff in all actions brought against him. Replication, protesting, &c. for plea, that he did not require defendant to appear as attorney for the plaintiff. Rejoinder and issue, 1. *Bro.* 33.
- Plea by one defendant confessing judgment by *nil dicit*; the other as to the ten pounds, *non assumpsit*, and as to giving plaintiff her diet, he gave it her part of the time, and was ready to have done so for the remainder, but plaintiff took his wife from his house, and therefore he could not perform his promise. Replication, that he did not take her away, for plea, that defendant did not board, &c. and issue, *Bro. Va. Me.* 112.
- Plea to *assumpsit* for board, &c. *non assumpsit*, and that the wife eloped, and defendant gave notice to all persons that he would not pay, &c. 3. *Instr. Cl.* 272. *Br. R.* 95, 96.

- Plea (to *assumpsit* to marry) that defendant promised on condition that a jointure was made, and traverse of promise in the declaration, *Hern.* 228.
- Plea (to action by surgeon) that the wound was not cured according to the promises by means of plaintiff, *Hern.* 229.
- Plea to declaration on a bill of exchange, protesting, &c. for plea, that the defendant is heir apparent to T. and for his better education was at Paris as an English gentleman, traversing that he was ever a merchant, demurrer thereto, 2. *Vent.* 294.
- Plea (to *assumpsit* on a warrantry) that defendant did not warrant, 1. *Brown.* 39. *Clift.* 939. *Bro. Red.* 95. with a traverse.
- Plea (by carrier) that the waggon, laden with the cloaths and other things, was broken open in an inn upon the road, and the cloaths, &c. were feloniously taken away, and traverse the promise to carry the cloaths safely, *Ro. Ent.* 3. *Instr. Cl.* 345. *Bro. Red.* 16.
- Non assumpsit* to pay money, *Wilk.* 279.
- Plea by surgeon, to cure plaintiff, *Ra. Entr.* 463.
- Plea protesting, &c. for plea *non assumpsit*, *Co. Entr.* 6. Similar plea with several *protestandos*, *Ra. Ent.* 4. *Wilk.* 272. *Co. Entr.* 6.
- Plea *non assumpsit* to indemnify plaintiff, *Ra. Entr.* 12.
- Plea that defendant did not purchase lands of plaintiff *modo et forma*, *Ra. Ent.* 6.
- Plea that defendant undertook to carry *fabas*, &c. and traverses the *assumpsit* in the declaration, *Co. Ent.* 313.
- Plea that defendant agreed to *enfeoff* plaintiff of lands, on condition that plaintiff would pay ten pounds before a certain feast-day, which he did not pay. Replication, that the agreement was made without such condition, and traverse the condition, *Ra. Entr.* 5.
- Plea that plaintiff *bought* of defendant four acres situate elsewhere, and traverses that he bought the lands named in the declaration, *Ra. Entr.* 6. *Vet. Entr.* 48.
- Plea (in *assumpsit* to become bound to pay forty-four shillings at the end of the year, or forty shillings lent, on demand), that defendant and another offered to seal and deliver plaintiff a bond for forty-four shillings, which plaintiff refused. Replication confessing, but says that he before requested defendant to pay him the sum of forty shillings. Rejoinder that he did not request, 3. *Brownl.* 75.
- Plea (to *assumpsit* to deliver barley on a certain day) that plaintiff before the day discharged defendant of his promise, *Herne* 133.
- Plea (to *assumpsit* to convey lands) that plaintiff within time discharged him of the agreement, *Ra. Entr.* 685.
- Plea, an agreement to deliver to plaintiff two cows in discharge of his promise, and all trespasses. Replication, no such agreement, *Wilk.* 273.
- Plea to *assumpsit* on a warrantry, that he did not warrant, *Ra. Ent.* 9. *Vet. Intr.* 19.
- Similar plea of sheep with a *protestando*, *Upper Bench*, P. 231.
- Plea that he warrants the horse free from a particular infirmity, and traverses the general warrant, *Her.* 223.
- Plea (on a sale of sheep) that he defendant undertook, if any of them should die of a particular disorder, before a certain day, then the plaintiff on notice should pay for the same according to the rate, &c. no notice was given, and traverses the warrantry to be general, *Her.* 224.

Executors and Administrators. (Pleas by, in Assumpsit.)

In Discharge

Of Accord, &c. Set off, &c. Statutes, &c. &c.

Vol.

I.

Page

104. Plea, first, *non assumpsit* by testator; second, *plene administravit* by administrator; third, *plene administravit præter*, several BOND DEBTS to defendant's self and others, and also several debts due to defendant on simple contract, and five pounds assets, which is insufficient to satisfy them.

257. Replication to plea of statute of limitations and accord and satisfaction, to a declaration by executor on a bill of exchange, that testator sued out of the court of chancery a writ, but before the return thereof he died, and plaintiffs, as executors, sometime afterwards sued out another writ, and that the cause of action did accrue within six years; to the third plea (accord, &c.) that neither the testator nor the plaintiffs are indebted to the plaintiff; fourth, admitting that A. B. did pay part, the testator did not accept the *last* bond in discharge of the *first*; fifth and sixth, that testator did not accept the last bond by way of a *new security*. See the Pleas, Vol. I. 254. and Accord and Satisfaction, *ante* Index.

200, 201. Plea by *baron and feme*, sued as *executor and executrix ne unques executor et executrix*; second, *plene administravit*. Replication and issue on the first plea; second plea, prays judgment of assets *in futuro*, with opinion on action brought against *baron and feme*, widow of intestate, liable only as *executrix de son tort*.

Vol.

II.

Page

79, 80. Pleas (to an action by *husband and wife*, of a former husband for use and occupation in testator's lifetime), first, *non assumpsit*; second, *non assumpsit infra sex annos* next before exhibiting plaintiff's bill; third, that plaintiff's testator in his lifetime with one J. W. and E. J. eleventh August 1767, became jointly and severally bound to Elizabeth Gritton in five hundred pounds, conditioned for payment of two hundred and fifty pounds when she should attain the age of twenty-one years, or marry, and for education and maintenance in the mean time; and that on the first of July 1775, defendant married said E. G. she not having then attained the age of twenty-one years, of which plaintiff's testator in his

Vol.

II.

Page

- lifetime had notice ; and that in testator's lifetime, and at the death, and of exhibiting plaintiff's bill, there was and yet is due and owing to the defendant by virtue of the said writing-obligatory, for principal and interest, fifty-six pounds seven shillings and threepence, and a further sum of money lent, paid, had and received, and on account stated, in testator's lifetime which exceeded plaintiff's demand, and out of which defendant offers to *set off*, and deduct damages. See declaration, Vol. II. p. 78. and cases, p. 81. Replication, issue on defendant's pleas, except as to so much of the third as attempts to set off the money supposed to be due to defendant, by virtue of the bond therein mentioned, and special *demurrer* to that, because it endeavours to set off a debt due and owing to defendant *and Elizabeth his wife*, and that it is otherwise informal. Joinder and issue.
81. 82. 83. 140. Plea of *non assumpsit* and *venire*.
444. Plea of statute of frauds to an action brought by executor in consideration of testator's forbearance, viz. withdrawing the record against defendant, but plea overruled on demurrer.
213. Plea *non accrevit infra sex annos*. Replication and issue.
- 308, 309. 312, 313, 314. Plea to a declaration by an attorney against executors, for business done; imparlance, plea, first general issue; second, *bankruptcy* in plaintiff and his co-partner, with all the proceedings under the commission set out. Replication, first, *not prof.* to fifth, sixth, and seventh Counts; issue as to first, second, third, and fourth Counts, and to plea of bankruptcy of plaintiff, that cause of action accrued after the assignment for the necessary support of plaintiff and his family. Rejoinder, that plaintiff hath not obtained his certificate; demurrer and rejoinder, *curia advisare vult dies datus venire*. See the case and note; this was a demurrer book; see Chippendale v. Tomlinson, 25 G.2. B.R. Cooke's Bankrupt Laws 459.

Vol.

III.

Page

219. Plea by an executrix; first, *non assumpsit*; second, *plene administravit*; third, that testator was indebted to defendant, and that the goods which come to her hands she retains to pay herself.
216. Plea to an action at the suit of administrator, *durante minoritate* of an infant, that they are not executors, and administration was obtained by fraud. Replication, fairly obtained, and infant within age.
218. Plea by an executrix, that the testator in his lifetime gave a bond to one A. B. which is still in force, and that she hath fully administered; second plea, *plene administravit*.

Vol.

III.

Page

211. Plea of *plene administravit præter* two pounds.
209. Plea of debt of a superior nature, pleaded by an executor *in bar* to a declaration in *assumpsit*.
213. Plea of *bona notabilia*, in an action on the case at the suit of an executor.
165. Plea of *set off* of money due on a judgment recovered by the defendant, against the plaintiff as *administrator*.
214. Plea of *plene administravit præter*, three pounds one shilling and eightpence in money.
214. REPLICATION to a plea of *plene administravit*, that plaintiff, after the death of testator, sued out a *latitat* against defendants, in order for them to put in common bail that he might exhibit his bill, and that at the time of exhibiting, &c. defendant had divers goods. REJOINDER, that defendant had no goods at the time, &c.
211. Plea (to declaration against an executor for use and occupation, and common Counts) that defendant was not executor, nor ever administered. REPLICATION, that he did administer.
231. Plea; first, general issue, *non assumpsit* by testator, by three defendants, *plene administravit* by each severally. Replication, taking issue on the *non assumpsit*, and a conditional judgment of assets *in futuro* on the other three pleas jointly, on the event of the issue being found for the plaintiff.
224. REPLICATION of Michaelmas Term to a plea of *plene administravit* of Hilary, protesting that after the last continuance of plea, assets came to defendant's hands, with opinion as to the propriety of such replication.
223. Plea to action of *assumpsit* by *administratrix*; first, *non assumpsit* and issue; second, *bankruptcy* in defendant after the causes of action accrued, and issue; third, *non assumpsit infra sex annos*; fourth, to first, second, third, and fourth Counts, set off money due from testator; and to fifth, sixth, and eighth Counts, of money due from defendant as *administratrix*. REPLICATION to third, that defendant did promise within six years, and issue; to fourth, *nil debet*, and issue.
224. REPLICATION to a plea of outstanding bonds pleaded, kept on foot by fraud.
219. Plea; first, general issue, that neither defendant or testator promised; second, as to all the Counts in the declaration, except the last, that testator appointed one P. and two others, joint executors with defendant, and conclusion in bar; third, that if any promise was made, it was made by all the executors jointly. REPLICATION to the first plea *similiter* to the second, that J. R. never proved the will
- 220.

Vol.

III.

Page

221.

nor administered; third plea, issue. REJOINDER, demurring generally to replication to second plea, and *similiter* to replication to third plea.

223. Plea to an action at the suit of plaintiffs, co-assignees under a commission of bankrupt against defendants, as executors of outstanding debts, on a bond for payment of money only; bonds for payment of money

223. in consideration of a marriage, and on certain conditions which are performed; of the debts due under the assignment to plaintiffs, and defendants shew that the commissioners had brought an action against defendants for the same, which are still depending; of debts on JUDGMENT RECOVERED against the testator in his lifetime, and on covenant for the payment of annuities, and of debts due by simple contract by testator, all with *plene administravit præter*.

245. Plea of *plene administravit* by administrator.

210. Plea of *plene administravit*, generally by defendant sued by a wrong name.

214. Special REPLICATION to a plea of *plene administravit*, setting forth the suing out and serving of *latitat*, and that at the time of the suing out, &c. defendant had assets in his hands sufficient, &c.

215. REJOINDER, admitting the suing out and serving, but say that defendant had not assets.

241. Plea by administrators; first, *plene administravit*; second, of superior debts, to wit, a judgment recovered by assignee of a bankrupt, against defendant's testator in his lifetime, and bonds outstanding; money expended by one of the defendants in discharge and satisfaction of testator's debts, and *plene administraverunt præter* five pounds, which are not sufficient to satisfy, &c.

244. Plea by executor, that testator *non assumpsit* to 1st, 2d, and last Counts; and as to the 3d, divers bonds in large sums from testator to defendant himself, and *plene administravit præter* a certain sum which he retains in part satisfaction.

221. Plea 1st, testator *non assumpsit*; 2d, a bond debt outstanding, and *plene administravit præter* five pounds, which are liable to that debt and not sufficient; 3d,

222. *plene administravit*. REPLICATION to 2d plea, taking judgment of assets *in futuro*, with stay of proceedings till trial of the issues; to 3d, issue, *plene administravit*.

219. Plea, 1st, general issue, that neither testator nor defendant promised; 2d, to all the Counts in the declaration, except the last, that testator appointed one of the plaintiffs and two others executors jointly with defendant, and concludes in bar; 3d, as to the last Count, if any promise was made it was made jointly.

220. REPLICATION to the 1st plea, *similiter*; to the 2d

plea,

- plea, that J. R. never proved the will or administered; to the 3d plea, taking issue on it. REJOINDER, demurring generally to the replication to the 2d plea, and *similiter* to the replication to the 3d plea.
158. Plea to *assumpsit* by executors, that testator sold to the plaintiff a cow for seven pounds, which, at the time of his death was unpaid; and that the executors of her plaintiff agreed to *release* each other on condition of the defendant's paying the plaintiff thirteen pounds.
246. Plea of *plene administravit* and bond outstanding.
223. Plea to action of *assumpsit* by administratrix; 1st, *non assumpsit* and issue; 2d, BANKRUPTCY in defendant after the causes of action accrued and issue; and 4th plea to 1st, 2d, 3d, and 4th Counts, SET OFF money due from testator; and to 5th, 6th, and 8th Counts, money due to defendant as administratrix. REPLICATION to 3d plea, that defendant did promise within six years; to 4th plea, *nil debet* and issue.
224. REPLICATION of Michaelmas term to plea of *plene administravit* of Hilary, protesting that after the last continuance of plea assets 'came to defendant's hands; with opinion as to the propriety of such replication.
225. Plea, 1st, *non assumpsit* by testator; 2d, SET OFF; 3d, *plene administravit*; 4th, outstanding debts on JUDGMENT RECOVERED, and on covenants for the payment of annuities, with *plene administravit præter*.
231. Plea, 1st, general issue, *non assumpsit* by three defendants, and *plene administravit* by each severally.
232. REPLICATION, taking issue on the *non assumpsit*, and a conditional judgment of assets *in futuro* on the other three pleas jointly on the event of the issue being found for the plaintiff.
293. Plea 1st, *non assumpsit*; 2d, *ne unques* executor, nor ever administered as executor; 3d, *plene administravit*;
294. 4th, testator *non assumpsit infra sex annos*. REPLICATION to 2d, that defendant is executor; to 3d, hath administered as executor, and that assets have come to his hands; to 4th, that when causes of action first accrued testator was abroad, and remained and continued abroad till his death; and that the original was sued out within six years.
239. Special REPLICATION to a plea of *plene administravit*, setting forth the suing forth and serving of *latitat*, and that at the time of the suing out, &c. defendant had assets in his hands sufficient, &c. Rejoinder, admitting the suing out and serving the *latitat*, but say that defendant had not assets, &c.
245. Plea by executor of judgment recovered in C. B. at the suit of plaintiffs, husband and wife.
- Non assumpsit* by testator, *Lill. Ent.* 478.

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Non assumpsit and *non assumpsit infra sex annos*, and a set off, that plaintiff's testator and plaintiff, as executor, are indebted in more money. REPLICATION thereto, 2. R. Pr. B. R. 87

Plea, *Non assumpsit*; 2d, *non assumpsit infra sex annos*; 3d, plea of mutual debts owing from plaintiff's testator, and plaintiff his executor, to defendant. REPLICATION, *quod assumpsit infra sex annos*, and that testator was not indebted, &c.; and that plaintiff, as executor, is not indebted to defendant in more than is due from her to plaintiff, as executor, 2. R. P. C. B. 31

Plea, *non assumpsit* by testator pleaded by executor; 2d, statute of limitations; 3d, set off. REPLICATION, a *latitat* sued out and a promise within six years; to 3d, *nil debet*. Qu. Rejoinder, that the writ issued in vacation of the preceding term; *non assumpsit infra sex annos* as to the issuing it. (Johnson v. Smith.) 2. Burr. 950 to 968

Plea by *administratrix* for goods sold to intestate and on an account stated; outstanding debts on bonds; judgments against defendant, as *administratrix*, on simple contracts; and *nil assets ultra* forty shillings, which were not sufficient to satisfy. REPLICATION, that one bond is part paid, and that obligee would accept ten pounds in satisfaction; same replication to the other bonds of judgment, and that she hath sufficient assets. REJOINDER, protesting no part was paid, faith she hath not asset to satisfy, &c. and issue, Lill. Ent. 58

Plea by administrator, that he, together with another person now deceased, recovered judgment against intestate in C. B. in his lifetime for one thousand pounds debt, and *plene administravit* except twenty pounds, which are charged with that debt, Ibid.

Plea to *assumpsit* brought by a simple contract creditor against an executor *de son tort*, that after action brought, and before plea pleaded, he delivered over the effects to the rightful administrator; that no administration was granted till after action brought, and a *retainer* of his own debt of a superior degree. Error and assignment of errors. (See Error.) 2. H. Bl. C. B. 18

Plea of *statute of limitations* by administrator, for the lodging of two children. REPLICATION, *actio accrevit infra sex annos*. Demurrer joinder, judgment for the plaintiff on demurrer; writ of enquiry awarded; damages assessed on the first Count; damages on the rest of the Counts; *remittitur dampna* of part; final judgment; *miserecor*. assignment of errors; plea in *nullo est erratum*. (See Error and Practical Forms.) 3. Ld. Raym. N. Edit. 11. to 14

Plea to a declaration in *assumpsit* by the assignees of a bankrupt against executrix of her late husband, 1st, *non assumpsit* by testator; 2d, *statute of limitations*; 3d, set off to two first Counts. REPLICATION to 2d plea, a *latitat* sued out, and a promise within *sex annos*; replication to 3d plea, *nil debet*. REJOINDER, that the *latitat* issued long after the *resc*, and that he did not promise within six years of issuing it. Demurrer, 2. Burr. 952

- REPLICATION by *attorney* to a plea of *non assumpsit infra sex annos*, before suing out the original writ an attachment of privilege against the defendant, as administratrix of E.; afterwards plaintiff died, and made present plaintiff executrix, whereby suit abated; and avers, that he undertook within six years before suing out attachment. Demurrer and joinder, 2. Bl. Rep. 1131
- Plea to declaration by executor, in consideration plaintiff had served testator, he undertook to provide for him in a plentiful manner, and that plaintiff came into the service of testator the sixth of March 1747, and there continued till December 1758, and that the testator did plentifully provide for said plaintiff, and paid him yearly for his salary; and traverses that the plaintiff continued to serve till, &c. Demurrer, joinder, continuance, judgment, award of inquiry, 1. Saund. 22. 3. Lev. 227. Cro. El. 99. 667. Cro. Car. 278. Lut. 299. 468, 469. 2. Saund. 207. 239. 1. Lev. 98. 10. Co. 116. (See Practical Forms.), 1. Mod. Ent. 117
- Non assumpsit* by an executor, Bro. Vad. 75. 113.
- Non assumpsit* within six years by an executor, setting forth the time of suing out the original. Replication and issue, 2. Mo. Ent. 138. Cl. Aff. 115.
- REPLICATION that plaintiff sued out a *latitat*, and that the cause of action accrued within six years before, Mo. Ent. 138.; and an *alias latitat* sued out with several continuances, Ibid. 140.
- Plea in a feigned issue to first promise, that defendant had paid more than he received; to second, that intestate was not indebted to plaintiff, Lill. Ent. 48. 66.
- Plea that defendant never was executor; and replication, Cl. Aff. 74. Hansf. 105.
- Non assumpsit* within six years by an executor. Replication and issue, 2. Mo. Ent. 138. Cl. Aff. 95.
- Plea that testator gave him orders to sell the cloth, which he did accordingly, and paid the money to the testator in his lifetime, Bro. Va. Me. 88.
- Plea, that after testator's death, and after the marriage of the plaintiff T. R. and A. his wife, he accounted with the said T. R. and was found in arrear forty shillings, which he paid, and the same was received in full of all demands. Replication, protesting that he had not accounted, for plea that he hath not paid; and issue, Brown's Va. Me. 100.
- Plea that defendant and intestate did account, and thereupon it did appear that he owed nothing to intestate. Replication that he did not account; and issue, Ibid. 109.
- Plea, protesting no such promise, he paid ten pounds five shillings to the intestate in his lifetime, in full satisfaction. Replication that he had not paid it; and issue, Ibid. 116.
- Plea that testator had accounted with him in his lifetime, and defendant was found in arrear in twelve pounds; that afterwards he paid ten pounds, and the other forty shillings he offered to the executor, 3. Instr. Cl. 277. Replication, protesting that he had not paid nor offered, &c. Plea that he made such promise, prout, and traverses the account. Rejoinder that he accounted, *modo et forma*; and issue, Ibid. 279.
- Plea, that administration never was granted to plaintiff, Cl. Aff. 117. Hansf. 105.
- Plea that testator paid plaintiff twenty pounds in satisfaction, Hansf. 131.

Plea by one executor, *plene administravit*; the other renounces the probate of the will, and pleads that no effects came to his hands.

Plea, *plene administravit*, 1. Bro. 17. *Hanf.* 44. Bro. Va. Me. 116.

Plea that testator, *non assumpsit*; verdict and judgment for plaintiff, Ro. Ent. 64.

Plene administravit. Replication and issue, Bro. Met. 18.

Non assumpsit by executors and administrators, Bro. Va. Me. 75.

Plea (to action for sheep sold by testator), that testator and defendant had accounted, on which defendant was found in arrear eight pounds, and defendant afterwards paid seven pounds thereof, and offered the other to the executor. Replication, protesting that he had not paid nor offered plea, maintains the declaration, and traverses that defendant had accounted with testator. Rejoinder that he had accounted, 1. Bro. 14.

Plea that intestate was indebted on a bond to R. in twenty pounds, and in thirty pounds to H. for rent unpaid at the time of his death, and that he hath not any goods besides, *Vid.* 45.

Plea by administrator as to part, that intestate, in his lifetime, paid it; and as to the residue, that defendant paid plaintiff ten pounds in full satisfaction of the promise. Replication that intestate had not paid part, and that defendant had not paid the residue, Br. R. 92.

Plea (by administratrix) of a judgment in debt in B. R. on bond against the administrator, that intestate was indebted on three separate bonds in so much, and that he had no effects besides. Replication that defendant had paid fifty pounds after the judgment, in full satisfaction of the judgment, and it remained undischarged by fraud; and as to bonds, defendant had paid several sums in full satisfaction of the debts, and they remained uncanceled by fraud. Rejoinder, that the judgment remained in full force, and traverses the fraud; and issue, Br. R. 55.

Plea that plaintiff brought his action in the sheriff's court, and had a verdict and judgment, Bro. Va. Me. 76. Replication that the recovery was for eight pounds eight shillings, which testator was indebted to him for wine; and traverses that they were for the same cause of action, 87. Defendant takes issue on the traverse. Verdict and judgment for plaintiff, 88.

Plea of *non assumpsit infra sex annos*, before the day of suing out the original, to an action brought by administrator, and that administration was granted such a day, Lill. Ent. 471.

Plea by administratrix, that intestate was indebted on bond to E. S. and a judgment recovered in B. R. against administratrix on simple contract by testator, and *nul assens ultra*.

Plea of payment of part in testator's lifetime, and part by himself since testator's death Cl. Aff. 148. Replication that he had not paid; and issue.

Plene administravit, &c. Cl. Aff. 166. 167. *Hanf.* 195.

Nil dicit by one executor, plea by another, *ne unques executor*, Cl. Aff. 174.

Plea *ne unques executor* by one, and judgment by *non sum informatus* as to the other, *Ibid.* 177.

Plea *ne unques executor* by one, and *plene administravit* by the other, *Hanf.* 119.

Plea of *plene administravit*, Herne 179.

Plea that testator was indebted by bond to J. who recovered thereon in the borough court; and replication judgment *per fraudem*, Upper B. P. 241.

Plea that intestate was indebted by bond, and that he had not assets *ultra*. Replication that he had, &c. 3. Brownl. 83.

Plea (on bill of exchange), protesting that they had no goods; for plea, *non assumpsit*, 3. Brownl. 60.

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...the fact that the ...

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EXECUTORS AND ADMINISTRATORS.

In the Common Pleas.

AND the said William, by Nathaniel D. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said Duke did not undertake and promise in manner and form as the said John hath above thereof complained against him the said William; and of this he puts himself upon the country, &c. And for further plea in this behalf the said William, by leave of the court here for this purpose first had and obtained according to the form of the statute in that case made and provided, says, that the said John ought not to have or maintain his aforesaid action thereof against him, because he saith, that *he the said William never was executor of the last will and testament of the said Louis Philip Joseph, Duc d'Orleans, deceased, as the said John hath above alledged; nor has he ever, as an executor of the last will and testament of the said Louis Philip Joseph, Duc d'Orleans, administered of the goods and chattels which were of the said Louis Philip Joseph, Duc d'Orleans, at the time of his decease; and this he the said William is ready to verify: wherefore he prays judgment if the said John ought to have or maintain his aforesaid action thereof against him, &c. : And for further plea in this behalf the said William, by leave of the court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, says, that the said John ought not to have or maintain his aforesaid action thereof against him the said William, because he says, that he hath fully administered all and singular the goods and chattels which were of the said Louis Philip Joseph, Duc d'Orleans, deceased, at the time of his death, and which have ever come to or been in his hands to be administered, to wit, at Westminster aforesaid, in the county aforesaid; and that he the said William hath not, nor had he, on the day of suing out the original writ of the said John against the said William, or at any time afterwards, any goods or chattels which were of the said Louis Philip Joseph, Duc d'Orleans, at the time of his death, in the hands of him the said William to be administered; and this he the said William is ready to verify: wherefore he prays judgment if the said John ought to have or maintain his aforesaid action thereof against him, &c. : And for further plea in this behalf the said William, by leave of the court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, says, that the said John ought not to have or maintain his aforesaid action thereof against him the said William, because he says, that the said Duke did not undertake or promise at any time within six years next before the day of suing out the original writ of the said John against the said William, in manner and form as the said John hath above alledged; and this the said William is ready to verify: wherefore*

he prays judgment if the said John ought to have or maintain his
aforesaid action thereof against him, &c. S. SHEPHERD.

Replication to
2d, that defend-
ant is executor;
to 3d, hath ad-
ministered as
executor, and
that assets have
come to his hands
to be, &c. that
when cause of
action first ac-
crued testator
was abroad, and
remained and
continued a-
broad till his
death, and that
the original was
sued out within
six years.

And the said John, as to the said plea of the said William by him first above pleaded in bar, and whereof he hath put himself upon the country, doth the like, &c. ; And as to the said plea of the said William by him secondly above pleaded in bar, he the said John says, that he ought not, by reason of any thing therein alledged, to be precluded from having his aforesaid action thereof maintained against the said William, because he says, that the said William, at the time of suing out the original writ of the said John in this behalf, was, and from henceforth hitherto hath been, and still is, the executor of the last will and testament of the said Louis Philip Joseph, Duc d'Orleans, deceased, and that the said William hath administered divers goods and chattels which were of the said Louis Philip Joseph, Duc d'Orleans, at the time of his decease, as executor of the last will and testament of the said Louis Philip Joseph, Duc d'Orleans, to wit, at Westminster aforesaid ; and this he the said John prays may be enquired of by the country, &c. ; And as to the said plea of the said William by him thirdly above pleaded in bar, he the said John says, that he ought not, by reason of any thing therein alledged, to be precluded from having his aforesaid action thereof maintained against him the said William, because he says, that the said William hath, and on the day of the suing out the original writ of the said John against the said William, to wit, on the day of at Westminster aforesaid, had divers goods and chattels which were of the said Louis Philip Joseph, Duc d'Orleans, deceased, at the time of his death, in the hands of the said William to be administered, of a large value, to wit, of the value of pounds, to wit, at Westminster aforesaid ; and this he the said John prays may be enquired of by the country, &c. ; And as to the said plea of the said William, by him lastly above pleaded in bar, he the said John says, that he ought not, by reason of any thing therein alledged, to be precluded from having his aforesaid action thereof maintained against the said William, because he says, that at the respective times when the said several causes of action in the said declaration mentioned first accrued to the said John, he the said Duke, now deceased, was abroad in foreign parts beyond the seas, to wit, at Paris in the kingdom of France, and that the said Duke continued and remained abroad in foreign parts beyond the seas from thence until and at the time of his decease ; and that the said John, within six years next after the decease of the said Duke, to wit, in the term of St. Michael now last past, sued out his original writ against the said William, executor as aforesaid ; and this he the said John is ready to verify : wherefore he prays judgment and his damages on occasion of the not performing of the promises and undertakings aforesaid to be adjudged to him, &c.

S. LE BLANC,

DIGNITY

DIGNITY OF PERSON PLEADED TO THE JURISDICTION IN ABATEMENT.

AND Hamilton Fleming, earl of Wigtoun, against whom the said William Blackmore hath exhibited his bill, and declared by the name of the right honourable Hamilton Fleming, commonly called earl of Wigtoun, in his own proper person comes and prays judgment of the bill aforesaid, because he says, that the lord king James the first, late king of England, Scotland, &c. by his letters patent, sealed with his great seal, and made at Westminster, on the nineteenth day of March, in the year of Our Lord 1606, considering the good, faithful, and grateful service of his beloved cousin John lord Fleming to him bestowed, gave and granted to his faithful and well beloved cousin and councillor John Earl of Montrose, and to his cousin and councillor, his chancellor Alexander earl of Fermelinodum, the authority of making, constituting, creating, and inaugurating the abovesaid John lord Fleming earl of Wigtoun, with suffrage, place, and pre-eminences in all the said lord the king's parliaments, councils, governments, and conventions according to his order and creation, which premises, with all the dignities and privileges to them belonging, the said lord the king did thereby will to remain and endure in all future time with the said John lord Fleming, and his heirs-male lawfully and lineally descending, as by the said letters patent, remaining of record in the king's office of the great seal in Scotland, may appear: And the said Henry Fleming earl of Wigtoun further says, that the said earl of Montrose, and earl of Fermelinodum by virtue of the said authority afterwards, to wit, on the same day and year aforesaid, to wit, at Westminster aforesaid, in due form of law, did make, constitute, create, and inaugurate the said John lord Fleming earl of Wigtoun, with the suffrage, place, and pre-eminences in the said lord the king's parliament of Scotland, according to his said order and creation; and the said John lord Fleming thereupon then and there became and was earl of Wigtoun, with all the dignities and privileges thereto belonging, to him and his heirs male lawfully and lineally descending: and the said Hamilton Fleming earl of Wigtoun further says, that the said John earl of Wigtoun afterwards, to wit, on the twelfth day of June, in the year of Our Lord 1619, to wit, at Westminster aforesaid, died, leaving lawful issue John Fleming, his son and heir, and also Alexander Fleming, a younger son of the said John earl of Wigtoun, upon the death of which said John earl of Wigtoun the said earldom, with all the dignities and privileges thereunto belonging, descended and came to the said John the son and heir, who thereupon then and there became and was second earl of Wigtoun; and the said Hamilton Fleming earl of Wigtoun further says, that afterwards, to wit, on the sixteenth day of June, in the year of Our Lord 1650, to wit, at Westminster aforesaid, the said John the second earl of Wigtoun died; leaving lawful issue;

Plea in abatement to the jurisdiction of dignity of person, that defendant is a peer of England and Scotland, and ought not to be sued by bill.

John Fleming his son and heir; upon whose death the said earldom, with all the dignities and privileges thereunto belonging, descended and came to the said John the son, who thereupon then and there became and was third earl of Wigtoun; and the said Hamilton Fleming earl of Wigtoun further says, that afterwards, to wit, on the third day of July, in the year of Our Lord 1664, to wit, at Westminster afore said, the said John third earl of Wigtoun died, leaving lawful issue, John Fleming his son and heir, and also William Fleming, a younger son of the said John third earl of Wigtoun; upon the death of which said John third earl of Wigtoun, the said earldom, with all the dignities and privileges thereunto belonging descended and came to the said John the son, who thereupon then and there became and was fourth earl of Wigtoun; and the said Hamilton Fleming earl of Wigtoun further says, that afterwards, to wit, on the fifth day of July, in the year of Our Lord 1668, to wit, at Westminster afore said, the said John fourth earl of Wigtoun died without issue male, upon whose death the said earldom, with all the dignities and privileges thereunto belonging, descended and came to the said William Fleming, who thereupon then and there became and was fifth earl of Wigtoun; and the said Hamilton Fleming earl of Wigtoun further says, that afterwards, to wit, on the third day of November, in the year of Our Lord 1684, to wit, at Westminster afore said, the said William fifth earl of Wigtoun, died, leaving lawful issue, John Fleming his son and heir, and also Charles Fleming, a younger son of the said William sixth earl of Wigtoun, upon the death of which said William fifth earl of Wigtoun the said earldom, with all the dignities and privileges thereunto belonging, descended and came to the said John the son and heir, who thereupon then and there became and was sixth earl of Wigtoun; and the said Hamilton Fleming earl of Wigtoun further says, that afterwards, to wit, on the sixth day of November, in the year of Our Lord 1743, to wit, at Westminster afore said, the said John the sixth earl of Wigtoun died without issue male, upon whose death the said earldom, with all the dignities and privileges thereunto belonging, descended and came to the said Charles Fleming, who thereupon then and there became and was seventh earl of Wigtoun; and the said Hamilton Fleming earl of Wigtoun further says, that afterwards, to wit, on the twenty-fifth day of November, in the year of Our Lord 1747, to wit, at Westminster afore said, the said Charles seventh earl of Wigtoun died, without leaving issue male, upon whose death the said earldom, with all the dignities and privileges thereunto belonging, descended and came to Charles Ross Fleming, as only surviving heir male of, and lawfully and lineally descended from the said Alexander, son of the said John first earl of Wigtoun; which said Charles Ross Fleming thereupon then and there became and was eighth earl of Wigtoun: And the said Hamilton Fleming, earl of Wigtoun, further says, that afterwards, to wit, on the twenty-eighth day of November, in the year of Our Lord 1768, to wit, at Westminster afore said, the said Charles Ross,
eighth

eighth earl of Wigtoun, died, upon whose death the said earldom, with all the dignities and privileges thereunto belonging, descended and came to the said Hamilton Fleming, who then and there became and was, and now is earl of Wigtoun; and this he the said H. F. earl of W. is ready to verify: wherefore, inasmuch as the said H. F. earl of W. is not sued by original writ, and by his name and dignity of H. F. earl of W. he prays judgment, and that the said bill may be quashed. **THO. BARROW.**

In the King's Bench, between

{	WM. BLACKMORE, Plaintiff.
	AND
	The Right Honourable
	HAMILTON FLEMING, commonly called EARL OF WIGTOUN, Defendant.

Hamilton Fleming, earl of Wigtoun, impleaded in this suit by the name of the right honourable Hamilton Fleming, commonly called earl of Wigtoun, maketh oath and faith, that the plea hereto annexed is true in substance and matter of fact. Sworn, &c.

COVENANT

COVENANT

ON

ARTICLES OF AGREEMENT*.

Declaration at the suit of surviving trustees, for not paying a proportion of subscription money towards defraying the expence of defending actions, &c. for the purpose of establishing a right of fishery.
(1) "last-mentioned"

(2) "last-mentioned"

(3) "last-mentioned"

LANCASHIRE, ss. John Rawlinson, &c. &c. complains of James Machell being in the custody, &c. in a plea of breach of covenant: for that whereas, by certain articles of agreement indented, made, concluded, and fully agreed upon the twenty-sixth day of May, A. D. 1781, at Lancaster, in the said county of L. between the said John Rawlinson, &c. &c. and one John Rawlinson the younger since deceased, of the first part, and one Isaac Bickett, the said James Machell, one, &c. one, &c. and the several persons whose hands and seals were, and are to the said articles of agreement subscribed and set of the second part (which said (1) articles of agreement, sealed with the seal of the said James Machell, and bearing date the day and year aforesaid, they the said John Rawlinson, &c. now bring into court here), reciting that William Bradshaw, of Halton, in the said county of L. claimed the sole and exclusive right to the fishery in the river Loyne, otherwise called Lune, from Hatton aforesaid, to Scaleford, within the town of L. aforesaid; and that the several persons, parties to the said articles of agreement, apprehended that the said William Bradshaw had not a sole and exclusive right to the said fishery, but that all his Majesty's liege subjects of this realm had a right to take fish in the said river Loyne, otherwise Lune, within the flux and reflux of the tide, by all ways and means whatsoever, the same river being an arm of the sea; and that they the said several persons, parties to the said (2) articles of agreement, had mutually agreed to prosecute and defend such their right of taking fish within the said river Loyne, otherwise, &c. within the limits of the flux and reflux of the tide, and to that end the said several persons, parties to the said (3) articles of agreement of the second part, had requested the said John Rawlinson, &c. and J. R. the younger deceased, in his lifetime, parties to the said articles of agreement of the first part, to be managers and directors in the prosecuting, carrying on, and defending of any action or actions, suit or suits, steps or proceedings to be brought, commenced, or carried on upon the account aforesaid, to which they had con-

* See Covenant on Indentures of Apprenticeship and on Leases, *post*.

fented the said (1) articles witnessed, that the said Isaac Bickett, (1) "last-men-
 the said James Machell, &c. &c. and the several other persons, tioned"
 parties to the said (2) articles of agreement of the second part, (2) "last-men-
 whose hands and seals were and are thereunto subscribed, and sat tioned"
 in pursuance of the said agreement on their parts, and for the pur- (3) "last-
 poses above, and in the said (3) articles after mentioned, did, by mentioned"
 the said (4) articles of agreement, for themselves severally and not (4) "last men-
 jointly, nor the one of them for the others or other of them, but tioned"
 each one for himself and herself, and for his and her own heirs, ex-
 ecutors and administrators, covenant, promise, and agree, to and
 with the said John Rawlinson, &c. and the said J. R. deceased,
 their heirs, executors, and administrators, that they the said Isaac
 Bickett, the said James Machell, &c. &c. and the several other
 persons, parties to the said articles of agreement on the second
 part, their several and respective heirs, executors, or administra-
 tors, should and would, from time to time, and at all times when
 and as often as need or occasion should require, well and truly
 pay, or cause to be paid into the hands of the said John Rawlin-
 son, &c. their heirs, executors, or administrators, or to such per-
 son or persons as they or a majority of them should nominate, di-
 rect, or appoint to collect and receive the same, the whole, or a
 full and equal share of the several sums of money subscribed and
 set opposite to their respective names, in proportion to the several
 sums of money subscribed by them as aforesaid, to be paid, ex-
 pended, laid out, and applied in or about the prosecuting, de-
 fending, or carrying on of any action or actions, suit or suits, or
 other steps or proceedings either at law, or in equity, or other-
 wise, for the purpose of establishing, asserting, or maintaining the
 right of them and every of them in and to the said fishery, all
 which sum or sums the said John Rawlinson, &c. and their heirs,
 executors, and administrators or assigns, were by the said (5) (5) "last-men-
 articles of agreement impowered and authorized to disburse, lay tioned"
 out, and to lay out and pay, and to prosecute, defend, and carry
 on such action or actions, suit or suits, or other steps or proceed-
 ings with effect; and the said John R. &c. did thereby, for them-
 selves severally, and for their several and respective executors,
 administrators, and successors, covenant, promise, and agree, to
 and with the said Isaac Bickett, the said James M. &c. and the
 said several other persons, parties thereto, on the second part, that
 they the said J. R. &c. severally, and their several and respective
 heirs, executors, and administrators, should and would, from
 time to time, and at all times when and so often as need or occa-
 sion should require, well and truly bear, pay, and apply the whole,
 or a full and equal share of the several sums of money subscribed
 and set opposite to their respective names, in proportion to the
 several sums of money subscribed by them as aforesaid, for the
 purpose of prosecuting, defending, or carrying on of any action
 or actions, suit or suits, or other steps or proceedings either at
 law or in equity, or otherwise, in order to establish, assert, and

(a) See *Assumpsit*, Vol III. p. 11. Expenses of Joint Actions.

- maintain the right of them and every of them in and to the said fishery, as by the said (1) articles of agreement (amongst other things) more fully appears: And the said J. R. &c. further say, that the said James did, at the time of his sealing and delivering the aforesaid (2) articles of agreement, to wit, on the twenty-sixth day of May A. D. 1781, at L. aforesaid, subscribe and set his hand and name to the said (3) articles, and did also then and there subscribe and set opposite to his name so subscribed, and set on the said articles of agreement the sum of twenty-one pounds, as and for the amount of his subscription money for the purposes in the said (4) articles of agreement (5) *in that behalf mentioned*: And the said John R. &c. in fact further say, that after the making of the said (6) articles of agreement, and after the said James had signed, subscribed, and executed the same, and became such subscriber as (7) aforesaid, and before the exhibiting of this bill, to wit, in Easter term, in the twenty-second year (8) *of the reign of our lord the now king*, the said William Bradshaw in the said (9) articles of agreement named, so claiming the sole and exclusive right to the said fishery in the said river Loyne, otherwise Lune, within the limits in the said articles mentioned, commenced, and prosecuted in the court of our said lord the king before the king himself (the said court then and still being held at Westminster, in the county of Middlesex), a certain action at law against the said *Edward Salisbury* (one of plaintiffs), one, &c. one, &c. one, &c. and one, &c. for certain trespasses alleged by the said William Bradshaw to have been committed by them in fishing in the said fishery in the said articles of agreement so claimed by him the said William Bradshaw as therein mentioned: And thereupon the said John R. &c. &c. and the said J. R. deceased, in his lifetime, and the said John R. &c. &c. after the death of the said J. R. did, according to the effect, true intent and meaning of the said (10) articles, and for the purpose of establishing, asserting, and maintaining the right of the said E. Salisbury, and of the said several other parties to the said (11) articles in and to the said fishery, according to the said articles, defend and try, and caused to be defended and tried the said action so commenced and prosecuted by the said W. Bradshaw as (12) aforesaid, to wit, at, &c. aforesaid. *And the said John R. &c. &c. further say, that by reason of the premises, and according to the effect of the said articles, the said John Rawlinson, &c. after the death of the said J. R. had occasion, and became entitled to collect and receive from the said James and the several other persons, parties to the said articles of the second part, whose hands and seals were thereunto subscribed and set as aforesaid, a certain share and proportion of the several sums of money by them respectively subscribed and set opposite to their respective names as aforesaid, to be paid, expended, laid out, and applied by the said John R. &c. in discharging and defraying the costs and expences of defending the said action as aforesaid; and that the equal share of the said James of the said sum of money so subscribed, and set opposite to his name as aforesaid, in*

proportion to the several sums of money subscribed by the said parties to the said articles as aforesaid, and which was due and payable from him by virtue of the said articles, for and towards the payment of the said costs and expences of defending the said action as aforesaid, amounted to a large sum of money, to wit, the sum of fifteen pounds fifteen shillings, to wit, at L. aforesaid: And that thereupon the said John R. &c. afterwards, and after the death of the said J. R. the younger, and before the exhibiting, &c. to wit, on the first of November 1783, at L. aforesaid, nominated, directed, and appointed one (1) "the said" James Parkinson, gentleman, to collect and receive the said last mentioned sum of money from the said James Machell; of all which said premises the said James Machell afterwards, to wit, on the same day and year aforesaid last-mentioned, there had notice; and by reason of the said premises, and according to the tenor and effect of the said (2) articles, the said James M. then and there (2) "last-mentioned" became liable to pay, and ought to have paid into the hands of the said John R. &c. &c. after the death of the said J. R. the younger, or to the said James Parkinson, after such nomination, direction, and appointment as (3) aforesaid, for the purposes in the (3) "last" said (4) articles mentioned, the said share and proportion of the (4) "last-mentioned" said (5) money so subscribed by the said James M. as aforesaid; (5) James M. of the said money so laid out and disbursed as aforesaid, in respect to the said sum of 21l. so by him set and subscribed, and upon said last-mentioned articles as aforesaid, not exceeding the said sum of 21l. and although the said John R. &c. &c. and J. R. the younger, in (5) James M. of the said money so laid out and disbursed as aforesaid, in respect to the said sum of 21l. his lifetime of the said J. R. the younger, and the said J. R. &c. &c. since the death of the said J. R. the younger, have, and each and every of them hath always, from the time of the making of the said (6) articles of agreement, hitherto done and performed every thing in the said (7) articles of agreement contained on their part and behalf to be done and performed; yet protesting that the said James M. hath not done or performed any thing in the said (8) articles of agreement contained on his part and behalf to be done and performed: the said John R. &c. &c. in fact say, that the said James M. hath not paid or caused to be paid into the hands of the said John R. &c. &c. the younger, or any of them, in the lifetime of the said J. R. the younger, or to the said John R. &c. &c. or any of them, since the death of the said J. R. the younger, or to the said James Parkinson, since the said (9) nomination, direction, and appointment, or to any person or persons whomsoever nominated, directed, or appointed to collect or receive the same, in pursuance of the said articles, the said last-mentioned sum of money, or any part thereof, or any part, share, or proportion of the said sum of money so (10) subscribed by him as aforesaid, although the said James M. after the (11) nomination, direction, and appointment of the said James Parkinson, to wit, on the first day of November, A. D. 1783, and often afterwards, at L. aforesaid, was requested by the said J. Parkinson to pay into his hands the said (12) share and proportion of the said James M. of the said sum of money so (13) subscribed by him as aforesaid; and although the said James M. hath, since the death of the said J. R. the younger, often been requested by the said J. R. &c. &c. to pay to them his said (14) share (14) "last-mentioned"

(1) "laid out and expended as last aforesaid"

(2) "and the same, and every part thereof, is still wholly unpaid"

(3) "last mentioned"

2d Count.

share and proportion of the same sum of money so (1) subscribed by him as aforesaid, but to pay the same to or into the hands of the said J. R. &c. &c. and J. R. the younger, in his lifetime, or to any of them, or to or into the hands of the said J. R. &c. &c. or any of them, since his decease, or to or into the hands of the said James Parkinson, the said James M. hath hitherto wholly always refused, and still refuses to pay the same to or into the hands of the said J. R. &c. &c. (2) contrary to the form and effect of the said (3) articles of agreement, and the covenant of the said James M. in that behalf made as aforesaid, to wit, at L. aforesaid, whereby they the said J. R. &c. &c. have been obliged to advance, lay out, disburse, expend, and pay the amount of the said share or proportion of the aforesaid subscription of him the said James M. so required and wanted as aforesaid out of their own proper money, to wit, at L. aforesaid: And whereas, by certain other articles of agreement indented, &c. (as in first Count, inserting what is in the margin till you come to what is in Italic, in page 300, fig. (12.) and omitting what is in Italic, in the same page, substitute the following): "and on that occasion, and by reason of the premises, did necessarily lay out, expend, and pay divers sums of money, in the whole amounting to a large sum of money, to wit, the sum of three hundred and forty-four pounds six shillings and sixpence of law-ful, &c. and that the equal share of the said James M. of the said sum of money so laid out and expended as last aforesaid, in respect of the said sum of twenty-one pounds so by him subscribed and set opposite to his name upon the said last-mentioned articles of agreement as aforesaid, and which was due and payable from the said James M. by virtue of the said last-mentioned articles, amounted to a large sum of money, to wit, the sum of fifteen pounds fifteen shillings, to wit, at Lancaster aforesaid;" (then proceed as in the first Count, from the Italic, page 300, to the end of the first Count, omitting all that is in Italic, and inserting all that is in the margin): And the said J. R. &c. &c. say, that the said James M. (although often requested so to do) hath not kept with them the covenants by him made with them and the said J. R. deceased as aforesaid; but hath broken the same, and to keep the same with them the said J. R. &c. &c. or any or either of them, hath hitherto wholly refused and still doth refuse, to the damage of the said J. R. &c. &c. of fifty pounds; and therefore they bring their suit, &c.

A. CHAMBRE.

Declaration by
master against his
apprentice, on a
covenant not to
exercise his trade
within ten miles
of his master's residence.

WORCESTERSHIRE, ss. William Loveridge complains of Richard Doughty being, &c. of a plea of breach of covenant; for that whereas by certain articles of agreement, indented, made, and agreed upon the eighteenth of October A. D. 1774, at Worcester, in the said county of Worcester, between one Thomas

Breach that he did.

Doughty

Doughty and the said Richard of the first part, and the said William of the other part (the counterpart of which said articles, sealed with the seal of the said Richard, the said William now brings into court, the date whereof is the same day and year aforesaid); the said William, in consideration of the sum of one hundred guineas to be paid as thereafter was mentioned, covenanted and agreed with the said Thomas D. his executors, administrators, and assigns, that he the said William should and would, as far as in him lay, within the time and space of two years from the date of the said articles, if the said Richard should so long live, or continue with the said William, teach and instruct, or cause the said Richard to be taught and instructed by the best ways and means he could in the science and business or occupation of a cutter or sow-gelder, in all things belonging to the same business which the said William then used: And the said Thomas D. did, by the said articles of agreement, covenant, promise, and agree, to and with the said William, that he the said Richard should and would dwell with, and faithfully and truly serve the said Richard in his said business during the said time of two years, which he the said Richard did thereby consent and agree to do accordingly, and that he the said William should have all the benefit of the said service during the said term; and the said R. did, in and by the said articles, for himself, his executors, administrators, and assigns, covenant, promise, and agree, to and with the said William, his executors and administrators, that the said Richard should not nor would, after his leaving or quitting the service of his said master (without first having obtained his consent and approbation for so doing), follow or exercise the said science, business, or occupation of a cutter or sow-gelder within the space of ten miles from the city of Worcester during the life of the said William, or so long as he should continue in and follow the business of a cutter or sow-gelder as aforesaid, as by the said articles (amongst other things) more fully appears: And the said William in fact says, that the said Richard, on the day of the date of the said articles, at, &c. aforesaid, entered and was received into the service of the said William under the said articles, and so remained and continued from thence until the end and expiration of the said term of two years therein mentioned, when his said servitude or apprenticeship under the said articles, ceased, ended, and determined, and he the said Richard left and quitted the service of his said master the said William, to wit, at, &c. aforesaid: And the said William in fact saith, that although he the said William hath always, since the said Richard so left and quitted his service as aforesaid, hitherto continued in and followed his said business of a cutter or sow-gelder as aforesaid; yet the said Richard, after he so left and quitted the service of the said William as aforesaid, and whilst the said William continued in and followed the said business of, &c. as aforesaid, to wit, on the first of January 1780, did follow and exercise, and always from thence hitherto hath followed and exercised, and still doth follow and exercise the

Breach.

ON ARTICLES OF AGREEMENT.

said science, business, or occupation of, &c. within ten miles from the city of Worcester, that is to say, at, and in the said city of Worcester, and in divers other places within ten miles of the said city, without first having obtained the consent or approbation of the said William for so doing, contrary to the tenor and effect, true intent and meaning of the said articles of agreement, and the said covenant of him the said Richard in that respect made as aforesaid, whereby the said William hath lost and been deprived of great profit, benefit, and advantage that would have arisen and accrued to him from the exercise of his said trade and business of a cutter and low-gelder within the limits aforesaid, if the said Richard had not followed and exercised the same within such limits, and in manner aforesaid, to wit, at, &c. aforesaid; and so the said William saith, that the said Richard (although often requested) hath not kept his said covenant so by him made with the said William as aforesaid, but hath broken the same, and to keep the same with the said William hath hitherto wholly refused, and still doth refuse, to the damage of the said William of two hundred pounds; and therefore he brings his suit, &c. Pledges, &c.

W. BALDWIN.

In the Exchequer.

Declaration by
Foreman to a tobacco-
conist against
his masters for
dismissing him
their service be-
fore the end of
his term, and
for not paying
him his wages.

CITY OF BRISTOL, AND } FOR that whereas by cer-
COUNTY OF THE SAME CITY. } tain articles of agreement, in-
dented, made, concluded, and agreed upon, the twenty-fourth day
of December, A. D. 1782, at and in the city of Bristol, in the
county of the same city, between the said (a) Matthew of the
one part, and the said James and Richard (b) of the other part,
(which said articles of agreement, sealed with the respective seals
of them the said James and Richard, and bearing date the day and
year last aforesaid, the said Matthew now brings here into court);
he the said Matthew for the considerations thereafter mentioned,
did, for himself, his executors and administrators, covenant, pro-
mise and agree to and with the said James and Richard, their ex-
ecutors and administrators, in manner following: that is to say,
that he the said Matthew should and would on or before the sixth
day of January, then next ensuing, enter into and continue, and
well, truly, diligently, and faithfully, to the best of his skill, judg-
ment, and capacity, serve them the said James and Richard in the
station or capacity of a foreman, manager, or superintendant in
the trade or business of a tobaccoist and snuff manufacturer, in
all its branches, (which said trade and business they the said James
and Richard were about to embark in upon their joint or part-
nership account), for and during and unto the full end and term
of twelve years, to be computed from the said sixth day of January
then ensuing, and should and would do and perform during the
said term, all and every act, deed, or thing relating to the said
trade and business in the best manner he was able, and during the

(a) plaintiff. (b) defendants.

said

said term continue with and work, and follow and attend the trade or business aforesaid, for the said James and Richard during the hours, times, and seasons that were customary and usual in the said trade; and also that he the said Matthew should not nor would at any time during the said term, commit or be guilty of any fraud or embezzlement of the monies, goods, wares, or merchandizes of the said James or Richard, or either of them, or for which he should or might be accountable, or wherewith he the said Matthew should or might be entrusted, or which should come to his hands and possession; and also should not during the said term be concerned in or carry on, or cause or procure to be carried on the said trade or business of a tobacco-nist and snuff manufacturer, or any of the branches thereof, either upon his own separate account, or jointly with any other person or persons whomsoever, or in any other way or manner whatsoever, nor should nor would at any time or times during the said term hire or employ any person or persons as a servant or servants in or to the said trade or business, nor dismiss or discharge any person or persons when taken into and employed in the service of the said James and Richard in the trade or business aforesaid, without the express approbation and direction of the said James and Richard for that purpose, upon any account or pretence whatsoever: And further, that he the said Matthew should and would from time to time, and at all times during the said term, disclose, explain, and make known unto them the said James and Richard, their executors and administrators, in the best way and manner that he was capable of, the art, trade, or mystery of a tobacco-nist, and in the making and manufactory of snuff, and all matters incident or relating to the said trade or business; and the said James and Richard in consideration of such service by the said Matthew to be done and performed as aforesaid, did, and each of them by the said articles of agreement for themselves and himself, and his and their executors and administrators (among other things) did covenant, promise and agree to and with the said Matthew, his executors and administrators, that they the said James and Richard should and would during the said term, well and truly pay, or cause to be paid unto the said Matthew the sum of one pound one shilling per week, weekly and every week as the same should grow due and payable, as by the said articles of agreement (reference being thereto had, will, among other things, more fully appear); and the said Matthew in fact saith, that the said articles of agreement being so made, he the said Matthew did upon the said sixth day of January, A. D. 1783, at and in the city and county aforesaid, enter, and he was then and there received into the service of the said James and Richard, to serve them under and upon the terms of the said articles of agreement, and he the said Matthew so from thence hitherto hath remained and continued, to wit, at the city of Bristol aforesaid, in the county of the same city; and the said Matthew further saith, that although he the said Matthew hath always since his entering into the said service of the said James and Richard as aforesaid, served them the said James and Richard, and

ARTICLES OF AGREEMENT.

behaved and conducted himself, and done and performed, and hath been ready and willing to serve the said James and Richard, and to do and perform all things in the said articles of agreement contained on his part and behalf, according to the tenor, effect, and meaning of the said articles of agreement, to wit, at, &c.: Yet protesting that the said James and Richard have not, nor hath either of them, performed or fulfilled any thing in the said articles of agreement contained on their part and behalf to be performed and fulfilled, he the said Matthew in fact saith, that although (a) of the said weekly sum of one pound one shilling in the said articles of agreement mentioned, for weeks of the said term of twelve years in the said articles mentioned, ended on the day of , in the year 1783 afore said, at, &c. afore said, grew and become due and payable from the said James and Richard to the said Matthew under and by virtue of the said articles; yet the said James and Richard did not, nor did either of them then and there, or at any other time whatsoever, pay the said sum of pounds, or any part thereof to the said Matthew; but then and there wholly refused and neglected so to do, and suffered and permitted the same to become and be, and the same was and still is wholly in arrear, due, owing, and unpaid, from the said James and Richard to him the said Matthew; contrary to the tenor and effect, true intent and meaning of the said articles, and the covenant of them the said James and Richard so by them in this behalf made as afore said, to wit, at, &c. afore said: And whereas by certain other articles of agreement indented, made, concluded, and agreed upon the said twenty-fourth day of December, in the year 1782 afore said, at, &c. afore said, between (&c. as in the first Count to the end of the recital of the articles of agreement), as by the said last-mentioned articles of agreement (reference being thereunto had), will (amongst other things) more fully appear; and the said Matthew in fact saith, that the said last-mentioned articles of agreement being so made as afore said, he the said Matthew did, upon the said sixth day of January next ensuing the making of the said last-mentioned articles, that is to say, the sixth day of January, in the year 1783 afore said, at, &c. afore said, enter, and he was then and there received into the actual service of the said James and Richard, to serve them under and upon the terms of the said last-mentioned articles of agreement; and he the said Matthew remained and continued in such service from thence for a long time, to wit, until and upon the day of , in the year 1783 afore said, when they the said James and Richard, without any just or reasonable cause whatsoever, and against the will of him the said Matthew, dismissed and discharged him the said Matthew from, and hindered and prevented him from acting in such service, and refused to employ, or to permit or suffer him to act therein, to wit, at, &c. afore said; and the said Matthew in fact further saith, that although he the said Matthew, during such

2d Count.

(a) All the money due to plaintiff or thereabouts, so as you lay sufficient, and attend to the calculation.

his actual service as aforesaid, did serve the said James and Richard, and behave and conduct himself, and do and perform all things in the said last-mentioned articles of agreement contained on his part and behalf, and from the time of their dismissing him as aforesaid, hitherto hath always been ready and willing, and hath frequently offered to serve, and to do and perform all things in the said last-mentioned articles contained on his part and behalf, according to the tenor, effect, and meaning of the said last-mentioned articles, and would have so done, and would still do, had he not been and were he not prevented by the said James and Richard, to wit, at, &c. aforesaid; yet protesting that the said James and Richard have not, nor hath either of them performed or fulfilled any thing in the said last-mentioned articles contained on their part and behalf; he the said Matthew in fact saith, that although pounds of the aforesaid weekly sum of one pound one shilling in the said last-mentioned articles mentioned, for weeks of the said term of twelve years in the said last-mentioned articles mentioned, ended on the day of , in the year 1783 aforesaid, did then and there, to wit, on the day and year last aforesaid, at and in the city and county aforesaid, become due and payable from the said James and Richard to the said Matthew; and although the said James and Richard were then and there requested and required by the said Matthew to pay the same to him the said Matthew, according to the tenor and effect of the said last-mentioned articles, and their aforesaid covenant so by them in that behalf made as aforesaid; yet the said James and Richard did not, nor did either of them then and there pay the said sum of pounds, or any part thereof to the said Matthew, but then and there suffered and permitted the same to become, and the same were and still are due, owing, and unpaid from them the said James and Richard to the said Matthew, to wit, at, &c. aforesaid, contrary to the tenor and effect, true intent and meaning of the said last-mentioned articles, and the covenant of them the said James and Richard therein contained, and so by them in this behalf made as aforesaid: And whereas by certain other articles of agreement, &c. (as in the second Count to the end of the recital of the articles), as by the said last-mentioned articles, &c. and the said Matthew in fact saith, that the said last-mentioned articles being so made as aforesaid, he the said Matthew did, upon the said fifth day of January next ensuing the making of the said last-mentioned articles, that is to say, on the sixth day of January, in the year 1783 aforesaid, at and in the city and county aforesaid, enter, and he was then and there received into the service of the said James and Richard under and upon the terms of the said last-mentioned articles; and the said Matthew in fact further saith, that although he remained and continued in such service from the time of his entering into the same as aforesaid for a long time, to wit, until and upon the day of in the year 1783 aforesaid, and did during such service serve the said James and Richard, and behave and conduct himself, and do and perform all things in the said last-mentioned articles contained on his part and behalf,

3d Count.

ARTICLES OF AGREEMENT.

behalf, and although he was then and there ready and willing to remain and continue, and hath always from thence hitherto been ready and willing, and still is ready and willing to be and to continue in such service, and to serve the said James and Richard under and upon the terms in the said last-mentioned articles of agreement contained, and according to the tenor and effect of the same, to wit, on, &c. aforesaid; yet protesting that the said James and Richard have not, nor hath either of them done and performed any thing in the said last-mentioned articles contained on their part and behalf to be performed and fulfilled; the said Matthew in fact saith, that the said James and Richard heretofore, to wit, on the said day of , in the year 1783 aforesaid, at and in the city and county aforesaid, without any just or reasonable cause whatsoever refused, and always from thence hitherto have refused, any farther to employ him the said Matthew in their service under the said last-mentioned articles, and then and there, to wit, on the day and year last aforesaid, at, &c. aforesaid, without any just or reasonable cause for so doing, and against the will of the said Matthew, dismissed and discharged him the said Matthew from and out of their service under the said last-mentioned articles, and then and there always from thence hitherto have refused, and still do refuse to pay him the weekly sum of one pound one shilling in the said last-mentioned articles specified, weekly, or in any other manner whatsoever, or any other sum of money whatsoever, or to make him any other payment or allowance whatsoever under the said last-mentioned articles, contrary to the tenor and effect, true intent and meaning of the said last-mentioned articles, and the covenant of the said James and Richard in that behalf; and so the said Matthew says, that the said James and Richard (although often requested) have not, nor hath either of them kept their said covenant so by them in form aforesaid made with him the said Matthew, but have and each of them hath broken the same, and to keep the same with the said Matthew have hitherto wholly refused, and still do refuse, to the damage of the said Matthew of pounds, whereby he is the less able to pay the debts, &c.

V. LAWES.

I was at first inclined to have declared for the *penalty* as well as for the wages, under the articles in question, but as there is some ground to doubt the goodness of such a Count under all the circumstances of this case, and as it is more for the interest of the plaintiff to consider the articles as still continuing, than as determined and at an end, which must necessarily be the case to entitle him to the penalty, so I have only declared upon them as being still open; and on this view of them have drawn three Counts: the first, as on a service

during the time in which the wages are said to have become due, in order to throw the proof of plaintiff's discharge upon defendants, in case they should put his *absence* in issue, which is not improbable; the second, on the real circumstances of the case, an absence through defendants own default; and the third, for dismissing him from their service, in case there should be a verdict under the wording of the covenant, whether the wages or salary are demandable *as such*, no actual service having taken place.

V. LAWES.

FOR

FOR that whereas, by certain articles of agreement made the twentieth day of July, A. D. 1789, to wit, at Linton, in the county of Kent, between the said John Beard (by the name and addition of John Beard, of Linton, in the county of Kent, yeoman), of the one part, and the said Thomas Joy and Thomas Honefs (by the names and descriptions of Thomas Joy, of Cranbrook, in the county of Kent, carpenter, and Thomas Honefs, of Cranbrook, in the county of Kent, carpenter), of the other part; which said articles of agreement, sealed with the seals of the said Thomas Joy and Thomas Honefs, he the said John now brings here into court, the date whereof is the day and year aforesaid, they the said Thomas Joy and Thomas Honefs, for the considerations therein mentioned, did covenant and agree to and with the said John, his heirs, executors, and administrators, that they the said T. J. and T. H. their executors and administrators, should and would, on or before the seventh day of October then next ensuing, in a good workmanlike manner hew, square, cut out, and frame, in the parish of Benenden, in the said county of Kent, a messuage or tenement, of the dimensions of forty-eight feet long and thirty feet wide, and two stories high, and rear the framing of the said house at a place called Lothington, in the parish of Maidstone, in the said county of Kent; which hewing, squaring, cutting, framing, and rearing, should be done at eight shillings and sixpence the square, he the said John finding rough timber, and felling and drawing the same to the pit at Benenden aforesaid, and carrying the said framing to the place wherein it was to be reared, and finding and allowing iron work, nails, and all other materials, as often as occasion should require: And further the said T. J. and T. H. for the considerations therein after mentioned, did covenant and agree to and with the said John, his executors and administrators, that they the said T. J. and T. H. would, on or before the fifth day of April then next ensuing, in good workmanlike manner, do all the window frames, doors, floors, skirting, and finishing work of the said messuage or tenement, he the said John finding and allowing deals, bolts, locks, iron work, nails, and other materials, excepting the mason's work forthwith done after the rearing of the said house; which window-frames, &c. was to be fairly valued and appraised by two indifferent persons, one to be chosen by the said John, his heirs, executors, and administrators, and the other by the said Thomas J. and Thomas H. their executors or administrators; and in case they could not agree, the two appraisers were to chuse a third person, whose determination was to be final: And the said John, for himself, his executors and administrators, did, by the said articles, covenant, promise, and agree, to and with the said T. J. and T. H. their executors and administrators, that he the said John, his heirs, executors, or administrators, should and would find and provide the timber, deals, carriage, drawing, and all other materials as often as occasion should require; and also pay the said T. J. and J. H. their executors and administrators, the said sum of eight

Declaration in
B. R. against
two house car-
penters, for not
finishing plain-
tiff's house
within a stipu-
lated time,
whereby he was
obliged to hire
another house
for the accom-
modation of his
family.

shillings and sixpence the square for framing the said house, so soon as the said house should be reared; and also pay the said T. J. and T. H. their executors and administrators, for the window-frames, &c. when, and so soon as the said house should be finished, as the same should be fairly valued: And also that it should and might be lawful to and for the said John B. his heirs or assigns, if he or they should think proper to make any alteration in the said building, or in the framing or finishing work, or for their or his surveyor, at their wills and pleasures, to give directions for such alterations at any time, provided it were without prejudice to the said T. J. and T. H.: And lastly, the said parties for the true performance of all and every the covenants and agreements in the said articles above mentioned, bound themselves and their several heirs, executors, and administrators, each to the other, in the penal sum of thirty pounds firmly by the said articles; at the same time it was by the said articles agreed, that the said T. J. and T. H. were to have the chips and ends according to the custom of the country, in lieu of beer, as by the said articles of agreement, reference being thereto had, will more fully appear: And the said John in fact saith, that although he the said John hath always, from the time of the making of the said articles of agreement hitherto, well and truly performed all things therein contained on his part and behalf to be performed and fulfilled, according to the true intent and meaning thereof, to wit, at the parish aforesaid, in the county aforesaid: Yet, protesting that the said T. J. and T. H. have not, nor hath either of them performed and fulfilled any thing in the said articles of agreement contained on their respective parts and behalves to be performed, he the said John avers, that although he the said John did, after the making of the said agreement, in pursuance thereof, as often as occasion required, find rough timber, and did fell and draw the same to the pit at Benenden aforesaid, and also carried the framing to the place where to be reared, as in the said agreement is mentioned, and as often as occasion required, found and allowed iron work, nails, and all other materials for the purpose in the said agreement mentioned, according to the tenor and effect, true intent and meaning thereof in that behalf, to wit, at the parish aforesaid, in the county aforesaid, of which said premises they the said T. J. and T. H. had due notice: And although the said John, after the making of the said agreement, and before the time limited thereby, for completing the said building, and by the directions of his surveyor for that purpose appointed, and with the notice and consent of and without prejudice to the said T. J. and T. H. make an alteration in the said building, according to the effect of the said articles, and pursuant to the power therein for that purpose given, that is to say, by lessening a little the dimensions of the said building, to wit, at the parish aforesaid, in the county aforesaid: Yet the said John avers, that the said Thomas J. and Thomas H. did not, nor did either of them, on or before the seventh day of October next, ensuing the making of the said agree-

agreement, and in the said agreement for that purpose mentioned, in a good workmanlike manner, hew, square, cut, and frame, and rear the said messuage or tenement in the said agreement mentioned, either according to the terms of the said agreement or subject to the said alterations in the dimensions thereof, in and by the said agreement authorized and herein before stated to have been made in pursuance thereof; but on the contrary thereof they the said T. J. and T. H. then and there failed and made default in performance of the said agreement in the particulars last above mentioned, contrary to the tenor and effect of the said agreement, and of the covenant of the said T. J. and T. H. therein for that purpose in that behalf contained as aforesaid, and in breach and violation thereof, to wit, at the parish aforesaid, in the county aforesaid: And the said John in fact further says, that although he the said John did, after the making of the said agreement, duly find and allow chests, locks, bolts, iron work, nails, and all other materials, and got the mason's work done for the doing of the window-frames, &c. of the said messuage or tenement in the said agreement mentioned, according to the tenor and effect, true intent and meaning thereof, in that behalf, to wit, at the parish aforesaid, in the county aforesaid, of which the said T. J. and T. H. had due notice: Yet they the said T. J. and T. H. did not, on or before the fifth day of April next ensuing the making of the said agreement, in a good workmanlike manner, do all the window-frames, &c. of the said messuage or tenement in the said agreement mentioned; but on the contrary thereof then and there therein failed and made default, contrary to the tenor and effect of the said agreement, and of the said covenants of the said T. J. and T. H. in that behalf made as aforesaid, and in breach and violation thereof; and so the said John says, that the said T. J. and T. H. have not, nor hath either of them, although often requested, &c. kept their said several covenants so made with the said John aforesaid; but have broken the same, and to keep the same with the said John have wholly refused, and still do refuse, to the damage of the said John of one hundred pounds; and therefore he brings his suit, &c. Pledges, &c.

CASE. The defendants went on with the building, the dimensions of the house being first lessened a few feet, agreeable to plaintiff's surveyor's directions. Defendants did not rear the house till some months after the 7th of October 1789, and are now about the finishing work; but, from their dilatoriness, will not, in all probability, finish it by Christmas next. The plaintiff, the better to accommodate them, hired a house to go in with his family till Lady-day last, thinking it would be then completed, and so continues on till now to his very great disadvantage; and has from time to time paid defendants several sums of money, nearly to the amount of their labour, and

cannot prevail on them to get the finishing work forward.

OPINION. I have perused the agreement, and am of opinion that an action of debt for the *penalty* may be maintained against the defendant for the non-performance of it; or if the penalty is not sufficient to cover the whole damage sustained, an action of covenant will *also* lie, in which damages to any amount that the plaintiff can prove, may be recovered.—It seems to me, that the plaintiff has done all on his part to be performed by the agreement; and the defendants, by their non-performance of their agreement, made it necessary for the plaintiff to

to hire another house, he is entitled to recover by way of damages the rent he is obliged to pay for such house, till the building undertaken by them is completed. If, on being applied to, the defendants should refuse to finish the building, I think the plaintiff may set others to work upon it, and he will be entitled to add the amount of the price of their labour to his damages, and in strictness, the defendants cannot recover any thing for what they have done: but if the defendants chuse to persevere in going on with their undertaking, I should doubt how far plaintiff can furnish it by others and make the defendants pay the

expence, especially as he seems to have waived all objections to the non-performance of the defendant's contract within the time limited by the agreement, by permitting them to go on after that time upon the old terms. The proper way to have disposed of them when the agreement was once broken, would have been to have discharged them from proceeding further, and to have finished the building at the plaintiff's own expence. It would then have become a question how the defendants could have been paid for their labour.

T. BARROW.

In the Common Pleas.

Covenant on articles of agreement entered into between the master and the defendant and other the officers and seamen, &c. Breach for non-payment of wages.

MIDDLESEX. William Craig Harborne, mariner, was summoned to answer John Wiley in a plea that he keep with him the covenants made between them according to the force, form, and effect of certain articles of agreement between them made, &c.: And thereupon the said John W. by Thomas James his attorney says, that by certain articles of agreement, indented, made, entered into, and concluded upon and sealed, with the said William C. H. on the twenty-eighth of August, A. D. 1787, at Westminster, in the county of Middlesex aforesaid, between the said W. C. H. (by the name and addition of William Craig Harborne, master of the ship Toms, of Liverpool), on the one part, and the said John Wiley and other the officers, seamen, and mariners, engaging to enter on board the said ship for the purposes herein after mentioned (by the description of the officers, seamen, and mariners, engaging to enter on board the said ship), on the other part, for the purposes of navigating the said ship during her then intended voyage, for which she was then sitting at the port of Liverpool aforesaid, and in which voyage it was then intended that the said ship should shortly afterwards proceed to Africa and America, and from thence back to Liverpool aforesaid, or some other port of discharge in Great Britain, when the said voyage should be ended, and not sooner (and which said articles of agreement are either in the possession and power of the said William C. H. or casually lost or destroyed), it was agreed, that for and in consideration of the sums advanced, and monthly or other wages and privileges against each respective officer, seaman, or other mariner's name thereunto set, they severally should and would immediately repair on board the said ship, and perform the above mentioned voyage; and that the said master should hire, and the said master did by the said articles of agreement hire the said officers, seamen, mariners, and others, for the said voyage, at such monthly or other wages and privileges, which should commence on the day the said ship should proceed past the black rock to sea, and continue until the ship's arrival at her port of discharge, when all wages due should be

be paid in thirty days from the time of such arrival, and not sooner: And it was thereby further agreed, that one half of the wages of each officer, seaman, mariners, or others, from the time of the said ship's departure from the black rock, and until she should have been one month at her final delivery port in America, should be paid unto the said persons in the current money of such delivering port, and that each shilling of which should be paid and received as if it was sterling; and that the half wages of all persons who might die in the course of the said voyage should be subject to such exchange; and that the said master should pay the said wages accordingly; and that if there should be no established currency at the place of delivery, or if the place of delivery should be on the continent of America, the said half wages should be paid at the rate of forty pounds *per cent.*: And although the said J. W. hath, ever since the making of the said articles of agreement, well and truly observed, performed, fulfilled, and kept all and singular the covenants, clauses, and agreements in the said articles of agreement contained, on his part and behalf to be observed, performed, fulfilled, or kept: Yet, protesting that the said William C. H. hath not well and truly observed, performed, fulfilled, or kept any of the covenants, clauses, or agreements in the said articles of agreement contained, on his part and behalf to be observed, performed, fulfilled, and kept; in fact the said J. W. saith, that he the said J. W. then and there, to wit, on the said twenty-eighth of August in the year aforesaid, at Westminster aforesaid, did sign his name to, and seal the said articles of agreement, in order to proceed on board the said ship and sail as a seaman or mariner in and on board the same, in and during the said intended voyage; and that the sum of two pounds was then and there inserted and set opposite to and against the name of him the said J. W. in the said articles of agreement; and that the said sum of two pounds, so inserted and set as aforesaid, then and there imported, meant, or signified to be so much money or wages, to be paid by the said William C. H. to him the said J. W. for each and every month during the time which he the said J. W. should so serve as such seaman or mariner in and on board the said ship in that voyage, that is to say, for and during the whole of the said voyage: And the said J. W. further saith, that he the said J. W. afterwards, to wit, on the said twenty-eighth of August in the year aforesaid, at the port of Liverpool aforesaid, did repair and enter on board the said ship as such seaman or mariner as aforesaid, as and for such monthly wages in that behalf as aforesaid, and did duly and faithfully serve as such seaman and mariner in and on board the same, from thence until the wrongful and injurious dismissal and discharge herein after mentioned; and that the said J. W. so being and remaining in and on board the same as aforesaid, the said ship afterwards, to wit, on the same day and year aforesaid, departed and set sail from the port of Liverpool aforesaid, and afterwards, to wit, on the same day and year aforesaid, proceeded past the black rock aforesaid, in the said articles of agree-

agreement mentioned, to sea on her said intended voyage, and afterwards, to wit, on the fifteenth of January in the year aforesaid, and on divers other days and times, as well before as afterwards, arrived at Africa and America aforesaid, in the said articles of agreement mentioned, and remained and continued in divers ports and places in Africa and America aforesaid in that voyage for a long time, and until her departure back for the port of Liverpool hereinafter mentioned, to wit, until the first of August, A. D. 1789: And the said J. W. further saith, that whilst he the said J. W. remained and continued in and on board the said ship as such seaman and mariner as aforesaid, and during the said voyage, to wit, on the eighteenth of January, A. D. 1788, at Cape Coast Castle, on the coast of Africa, in parts beyond the seas, he the said W. C. H. wrongfully and injuriously, without any reasonable or probable cause whatsoever, and against the will of the said J. W. dismissed and discharged him the said J. W. from the said ship, and wholly prevented and hindered him the said J. W. from acting or serving any longer as such seaman and mariner in and on board the same, to wit, at Westminster aforesaid: and that he the said John W. being so dismissed and discharged as aforesaid, the said ship afterwards and during the said voyage, to wit, on the said first of August, in the said A. D. 1789, departed and set sail from America aforesaid for and towards this kingdom; and that the said ship afterwards, to wit, on the eighteenth of November in the year last aforesaid, arrived back at this kingdom, to wit, at the port of Liverpool aforesaid, and was then and there discharged, and the said voyage was thereby ended and determined, to wit, at Westminster aforesaid: And the said John W. further saith, that during the said voyage, and before the arrival of the said ship at Africa and America aforesaid, to wit, on the twenty-eighth of December, in the said year of Our Lord 1787, a large sum of money, to wit, the sum of eight pounds of lawful, &c. as and for the monthly wages of him the said J. W. for four months of the said time in that behalf, ending on that day in that year, became and were due, in arrear, and unpaid from the said W. C. H. as such master of the said ship as aforesaid, according to the form and effect of the said articles of agreement and of the covenants of the said W. C. H. so made as aforesaid, and although thirty days, from the time of such arrival of the said ship back at the port of Liverpool, where she had been so discharged as aforesaid, are long since elapsed: Yet the said W. C. H. (although often requested), to wit, at Westminster aforesaid, hath not paid to the said John W. the said sum of eight pounds, or any part thereof; but he so to do hath hitherto wholly refused and still doth refuse, and the same and every part thereof still remains due, in arrear, and unpaid to the said John, contrary to the form and effect of the said articles of agreement of the said covenant of the said W. C. H. in that behalf made as aforesaid: And the said John W. further saith, that by means of his being so wrongfully and injuriously dismissed and discharged by the said William C. H. from the said

said ship in parts beyond the seas, during the said voyage, he the said John W. hath been prevented and hindered from serving and acting as such seaman and mariner in and on board the said ship, for and during the residue of the said voyage, that is to say, from the said eighteenth of January, A. D. 1788, until the arrival and discharge of the said ship at Liverpool aforesaid, as he ought to do and otherwise should and would have done, according to the form and effect of the said articles of agreement; and also, by means of the premises he the said J. W. lost and was deprived of a large sum of money, to wit, the sum of forty-four pounds of like lawful money, which otherwise would have arisen and accrued to him the said John W. as such seaman and mariner as aforesaid, by virtue of the said articles of agreement and of the covenant of the said W. C. H. in that behalf made as aforesaid, for his service on board the said ship for and during the time last aforesaid; and which said wrongful and injurious discharge, so done and committed by the said William, was and is contrary to the effect and the true intent and meaning of the said articles of agreement, and of the covenant of the said W. C. H. so made in that behalf as aforesaid: And so the said John W. saith, that the said W. C. H. hath not kept with him the covenants so made, between them and hath broken the same; and to keep the same with the said J. W. hath hitherto wholly refused, and still doth refuse, to the damage of the said J. W. of one hundred pounds; and therefore he brings suit, &c.

HARBORNE } AND the said W. C. H. by John Windus his Plea, 1st, non
at suit of } attorney, comes and defends the wrong and injury, *est factum*.
WILEY. } when, &c. and says, that the articles of agreement
in the said declaration mentioned, are not his deed, and of this he
puts himself upon the country, &c.: And for further plea in this
behalf, as to the said breach of covenant above asserted, in the 2d, Plea of set
non-payment of the said sum of eight pounds in the said declaration off.
mentioned, the said W. C. by leave of the court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, says, that the said John ought not to have his aforesaid action thereof maintained against him, because he says, that the said John, before and at the time of the commencement of his action at Westminster, was and still is indebted to the said W. C. to a much larger amount than the amount of the damages sustained by the said John, by reason of the same breach of covenant, *i. e.* in the sum of twenty pounds of lawful money of Great Britain, for divers goods, wares, and merchandizes by the said W. C. before that time sold and delivered to the said John, at his special instance and request; and in the further sum of twenty pounds of like lawful money, for money by the said John before that time had received for the use of the said William C.; and also in the further sum of twenty pounds of like lawful money, for money by the said William C. before that time paid, laid out, and expended for the use of the said

For goods sold and delivered, for money had received, laid out and expended.

said John, at his special instance and request, out of which said several sum of money so due and owing from the said John to the said William C. he the said William C. is ready and willing, and hereby offers to set off and allow to the said John so much as will be sufficient to satisfy the amount of the damages sustained by him, by reason of the same breach of covenant, according to the form of the statute in such case made and provided, and this he the said William C. is ready to verify; wherefore he prays judgment if the said John ought to have his aforesaid action thereof maintained against him, &c. : And for further plea in this behalf, as to the

Third plea.

That it was agreed by the said articles, if any person should mutiny, he should forfeit his pay to the owners.

said breach of covenant above aforesaid, in the non-payment of the said sum of eight pounds in the said declaration mentioned, the said William C. by the like leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said John ought not to have his aforesaid action thereof maintained against him; because he says, it was further agreed by the said articles in the said declaration mentioned, that any person or persons that should mutiny, or endeavour to excite a mutiny, or should strike the said master or other principal officer of the said ship, or behave in a riotous or disorderly manner on board the said ship, should, besides the punishment inflicted by law, forfeit to the owners of the said ship, all the wages then due to any such offender or offenders; and the said William further says, that the said John after the departure of the said ship from the port of Liverpool, and during her said voyage, to wit, on the eighteenth of January, in the year 1788, behaved in a riotous and disorderly manner on board the said ship, contrary to the form and effect of the said articles, whereby, and by force of the said articles, all the wages then due to the said John became and were forfeited by him to the owners of the said ship, to wit, at Westminster aforesaid; and this the said William is ready to verify: wherefore he prays judgment if the said John ought to have his aforesaid action thereof maintained against him, &c. : And for

Fourth plea.

Discharging and dismissing plaintiff, in order to put an end to the mutiny.

farther plea in this behalf, as to so much of the said declaration as relates to the dismissing and discharging of the said John from the said ship, and preventing and hindering him from acting or serving any longer as a seaman and mariner in and on board the same, the said William C. by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said John ought not to have his aforesaid action thereof maintained against him, because he says, that the said John, on divers days and times after the departure of the said ship from the said port of Liverpool, and during her voyage from thence to the coast of Africa in the declaration mentioned, and also during her stay upon the said coast, to wit, on the said eighteenth of January 1788 aforesaid, behaved in a disorderly, seditious, and mutinous manner on board the said ship, and endeavoured to raise and excite a mutiny among the other seamen on board the same; wherefore the said William C. then and there to wit,

wit, on the day and year last aforesaid, at Cape Coast Castle, in the said declaration mentioned, in order to put an end to the said mutiny, and prevent the further progress thereof, and for the security of the said ship and the cargo then on board her, necessarily dismissed and discharged the said John from the said ship, and prevented and hindered him from acting or serving any longer as such seaman or mariner in and on board the same, as he lawfully might for the cause aforesaid; and this he is ready to verify: and therefore he prays judgment if the said John ought to have his aforesaid action thereof maintained against him, &c.

J. ADAIR.

MIDDLESEX. Gilbert Sheldon complains of John Hill, otherwife, &c. being, &c.; for that whereas by certain articles of agreement made, &c. (make a protest of the articles, and then recite the demise and lessees covenant for payment of the rents, and then proceed with a recital of the defendant's covenant for securing the payment thereof, which in this case was to the effect following): And the said John did in and by the said articles bind himself to the said Gilbert for the true payment of the said yearly rent of fifty-two pounds, by the said Edmund Winter to the said Gilbert Sheldon, at the times and in the proportions before mentioned for payment thereof, as by the said articles of agreement, relation being thereunto had, will (amongst other things) more fully and at large appear; by virtue of which said articles of agreement the said Edmund Winter in the said articles named, after the making thereof, to wit, on the said eighteenth day of April, in the year 1780 aforesaid, to wit, at Westminster aforesaid, entered into all and singular the said premises thereby demised, with the appurtenances, and became and was and still is possessed thereof for the said term so to him thereof demised as aforesaid; and the said Gilbert further saith, that although he the said Gilbert always from the time of the making of the said articles of agreement, hitherto hath well and truly performed and fulfilled all things therein contained, on his part and behalf to be performed and fulfilled, according to the true intent and meaning of the said articles, to wit, at Westminster aforesaid; yet protesting that the said John hath not performed or fulfilled any thing in the said articles of agreement contained on his part and behalf to be performed and fulfilled, he the said Gilbert in fact saith, that twenty-six pounds of the aforesaid rent of fifty-two pounds in the said articles mentioned, and reserved for one half year of the said term thereby demised, ended on the twenty-ninth day of September, in the year 1780 aforesaid, at and on that day in the year aforesaid, to wit, at Westminster aforesaid, became due and in arrear from the said Edmund on the said articles of agreement mentioned, to the said Gilbert, and so continued from thence until and at and after the end of the said twenty-ninth day of September, in the year 1780 aforesaid, contriving to the form and effect of the said articles

Covenant on articles of agreement for non-payment of rent.

ARTICLES OF SEPARATION.

of agreement, and the covenant of the said Edward in that behalf made as aforesaid, whereby the said John according to the tenure and effect of the said articles of agreement, and the covenant of him the said John in that behalf made as aforesaid, afterwards, and whilst the said twenty-six pounds of the rent aforesaid were due, owing, in arrear, and unpaid from the said Edmund to the said Gilbert as aforesaid, to wit, on the twentieth day of September, in the year 1780 aforesaid, at Westminster aforesaid, became liable to pay to the said Gilbert the said twenty-six pounds of the rent aforesaid, so due, owing, in arrear, and unpaid to him as aforesaid, whereof the said John afterwards, and before the exhibiting the bill of the said Gilbert, to wit, on the day and year last aforesaid, at Westminster aforesaid, had notice; and was requested by the said Gilbert to pay him the said twenty-six pounds of the rent aforesaid so due and in arrear to him as aforesaid; but the said Gilbert in fact further saith, that the said John did not then and there pay, nor hath he at any time since hitherto paid the said twenty-six pounds of the rent aforesaid so due and in arrear as aforesaid, or any part thereof to the said Gilbert, contrary to the tenor and effect of the said articles of agreement, and of the covenant of the said John in that behalf made as aforesaid, but the same are, and every part thereof is still in arrear and unpaid to the said Gilbert, either by the said John or the said Edmund in the said articles of agreement mentioned, to wit, at Westminster aforesaid; and so the said Gilbert saith that he the said John hath not kept his said covenant so by him made with the said Gilbert as aforesaid (although often requested), but hath broken the same, and to keep the same with the said Gilbert hitherto wholly refused, and still refuses so to do; damages, &c.; and therefore he brings his suit, &c.; pledges, &c.

V. LAWES.

Trinity Term, in the eighth year of the reign of king George the Third. Cooke. Heretofore as it appeareth of the term of Easter last past in the six hundred and first, six hundred and second, and six hundred and third rolls, it is thus contained:

Bill against an attorney of C.B. in covenant on articles of separation between defendant and plaintiff, his wife; defendant was to allow plaintiff an annuity; breach for not paying it.

MIDDLESEX to wit. Be it remembered, that on the twentieth day of April, in this same term, James Innes came here into court, by Clement Hall, his attorney, and exhibited to the justices of our said lord the king here, his certain bill against Edmund Lacon, gentleman, one of the attornies of the court of our lord the king of the bench, present here in court in his proper person, the tenor of which said bill follows in these words:—
To the justices of our lord the now king of the bench: Middlesex, to wit. James Innes, by Clement Hall, his attorney, complains of Edmund Lacon, gentleman, one of the attornies of our lord the now king of the bench, here present here in court in his own proper person, of a plea of covenant broken: For that
whereas

whereas by a certain indenture made on the third day of March 1767, at Westminster, in the said county of Middlesex, between the said James, by the name and addition of James Innes, of the parish of St. James's, Westminster, in the county of Middlesex, esquire, and a captain in the navy, of the one part; and the said Edmund, by the name and addition of Edmund Lacon, of Gray's-inn, in the said county of Middlesex, gentleman, of the other part, (the one part of which said indenture, sealed with the seal of the said Edmund, the said James now brings into court, the date whereof is the same day and year aforesaid), the said James for and in consideration of the covenants and agreements thereafter contained, on the part and behalf of the said Edmund, his executors and administrators, to be paid, kept, done, and performed, did thereby for himself, his heirs, executors and administrators, covenant, promise, and agree to, and with the said Edmund, his executors and administrators, in manner and form following, that is to say, that Sarah Innes, the wife of the said James, and the daughter of him the said Edmund, should and might peaceably and quietly, and without any contradiction, controul, interruption, molestation, or disturbance whatsoever, of, by, or from the said James, or for his order, direction, or procurement, directly or indirectly from time to time, and at all times hereafter, go, live and reside at such place or places, and in such manner as she should think fit, separate and apart from the said James her husband: and the said Edmund did for himself, his heirs, executors and administrators, covenant, promise, and agree to, and with the said James, his heirs, executors, and administrators, by the said indenture in manner and form following, that is to say, that the said James observing, performing, fulfilling, and keeping the said covenants and agreements in the said indenture contained, on his part and behalf to be kept, done, and performed, then the said Edmund, his executors, and administrators should and would from time to time, and at all times thereafter, during such times as the said James and Sarah his wife should live separate and apart from each other, well and sufficiently save and keep harmless and indemnified the said James, his heirs, executors, and administrators, and his and their lands, goods, chattels, and effects from and against the payment of all debts whatsoever, which she the said Sarah Innes had contracted with any person or persons whomsoever, for necessities or otherwise, either before her intermarriage with the said James, or since the seventeenth day of June then last past, and also from and against the payment of all such other debt or debts as she the said Innes should or might thereafter contract with any person or persons whatsoever, for necessities or otherwise, during such their said separation; and also from and against all costs, charges and damages which he the said James, his heirs, executors, or administrators should or might be compelled by law or equity to pay or sustain, or be put unto for or on account of any such debt or debts which she the said Sarah Innes had contracted, either before her inter-

ARTICLES OF SEPARATION.

intermarriage with the said James, or since the seventeenth day of June then last past, or should or might thereafter contract during such separation as aforesaid: and also that she the said Sarah Innes should not nor would at any time or times in any wise interrupt, disturb, or trouble the said James in his manner of living, or by following him, or abusing him by ill language, or otherwise howsoever, and that he should and might attend or go about his lawful business from time to time, peaceably and quietly, without any interruption, molestation, or trouble by or from her, or any other person or persons by her order, direction, or procurement in anywise howsoever; and moreover that he the said Edmund, his executors and administrators, should and would well and truly pay, or cause to be paid unto the said James, the clear yearly sum of one hundred pounds, of lawful money of Great Britain, by half yearly payments, namely, on the twenty-fifth day of March, and the twenty-ninth day September, the sum of fifty pounds, part thereof, being the interest of the sum of one thousand pounds, for and during the life of the said James, and fifty pounds, residue of the said one hundred pounds, during the joint lives of the said Sarah Innes (heretofore Sarah Breton), and to the said Edmund, according to the stipulations mentioned in a certain memorandum or agreement of the twenty-fourth day of September 1762, made previous to the marriage of the said James and Sarah his wife; in consideration whereof, and for other considerations therein before-mentioned, he the said James for himself, his heirs, executors, and administrators, did thereby covenant, promise, and agree to, and with the said Edmund, his executors and administrators, that it should and might be lawful to and for the said Edmund, his executors and administrators, to deduct and defalk out of the said yearly sum of one hundred pounds, the clear yearly sum of fifty pounds, of like lawful money, to be by him or them paid and applied, during such separation as aforesaid, for and towards the support and maintenance of the said Sarah Innes, and for her sole and separate use and benefit, and to be paid into her own proper hands, and her receipt in writing to be from time to time sufficient discharge and discharges for the same, which said yearly sum of fifty pounds was to commence and be payable unto the said Sarah Innes from Michaelmas day last, as by the said indenture more fully appears; and although the said James hath always well and truly observed, performed, fulfilled, and kept all and singular the covenants, clauses, and agreements in the said indenture contained, on his part and behalf to be observed, performed, fulfilled and kept, yet protesting that the said Edmund hath not well and truly observed, performed, fulfilled, or kept any of the covenants, clauses, and agreements in the said indenture contained, on his part and behalf to be observed, performed, fulfilled, and kept; in fact the said James saith, that on the twenty-fifth day of March, in the year of Our Lord 1768, fifty pounds for two half yearly payments of the said yearly sum of one hundred pounds became due and owing from the said Edmund to the said James; yet the said Edmund, although often requested, hath not yet paid the said sum of fifty pounds, or any part thereof to the said James

James, but to pay the same to the said James he the said Edmund hath altogether refused, and still doth refuse, and so the said James saith, that the said Edmund hath not kept with him the covenant made between them as aforesaid, but hath broken the same, and to keep the same with the said James hath hitherto altogether refused, and still does refuse, to the damage of the said James of one hundred pounds; and therefore he prays his remedy.

And the said Edmund, in his own proper person, comes and defends the wrong and injury, when, &c. and craves oyer of the said indenture in the said declaration mentioned, and it is read to him in these words, to wit: this indenture, made the third day of March in the year of Our Lord 1767, between James Innes, of the parish of St. James, Westminster, in the county of Middlesex, esquire, a captain in the navy, of the one part, and Edmund Lacon, of Gray's-Inn, in the said county of Middlesex, gentleman, of the other part: In the first place he the said James Innes, for and in consideration of the covenants and agreements hereinafter contained on the part and behalf of the said Edward Lacon, his executors and administrators, to be paid, kept, done, and performed, doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said Edmund Lacon, his executors and administrators, in manner and form following, that is to say, that Sarah Innes, the wife of him the said James Innes, and the daughter of him the said Edmund Lacon, shall and may peaceably and quietly, and without any contradiction, controul, interruption, molestation or disturbance whatever, of, by, or from the said James Innes, or by his order, direction, or procurement directly or indirectly from time to time, and at all times from thenceforth, go, live, and reside at such place or places, and in such manner as she shall think fit, separate and apart from the said James Innes, her husband: And the said Edmund Lacon doth, for himself, his heirs, executors and administrators, covenant, promise, and agree to and with the said Innes, his heirs, executors, and administrators, by these presents, in manner and form following, that is to say, that he the said James Innes, observing, performing, fulfilling, and keeping the covenants and agreements in these presents contained on his part and behalf to be kept, done, and performed, then he the said Edmund Lacon, his executors and administrators, shall and will, from time to time, and at all times hereafter during such times as the said James Innes and Sarah his wife shall live separate and apart from each other, well and sufficiently save, keep harmless, and indemnified the said James Innes, his heirs, executors and administrators, and his and their lands, goods, chattels and effects from and against the payment of all debts whatsoever which she the said Sarah Innes hath contracted with any person or persons whomsoever, for necessities or otherwise, either before her intermarriage with the said James Innes, or since the seventeenth day of June now last past: and also from and against the payment of all
 such

COVENANT.—ARTICLES OF SEPARATION.

such other debt or debts she the said Sarah Innes shall or may hereafter contract with any person or persons whatsoever, for necessities or otherwise, during such the said separation, and also from and against all costs, charges and damages, which he the said James Innes, his heirs, executors or administrators shall or may be compelled by law or equity to pay or sustain, or be put unto for or on account of any such debt or debts which she the said Sarah Innes hath contracted, either before her intermarriage with the said James Innes, or since the said seventeenth day of June last, or shall or may hereafter contract during such separation as aforesaid; and also, that she the said Sarah Innes shall not, nor will at any time or times in anywise interrupt, disturb, or trouble the said James Innes in his manner of living, or by following him or abusing him by ill language or otherwise howsoever, and that he shall and may attend and go about his lawful business, from time to time, peaceably and quietly, without any interruption, molestation, or trouble, by or from her or any other person or persons, by her order, direction, or procurement, in anywise howsoever; and moreover, that the said Edmund Lacon, his executors or administrators, shall and will well and truly pay, or cause to be paid unto the said James Innes, the clear yearly sum of one hundred pounds of lawful money of Great Britain, by half yearly payments, viz. on the twenty-fifth day of March, and the twenty-ninth day of September, that is to say, the sum of fifty pounds, part thereof, being the interest of the sum of one thousand pounds, for and during the life of the said James Innes, and fifty pounds, residue of the said one hundred pounds, during the joint lives of the said Sarah Innes (heretofore Sarah Breton), and of the said Edmund Lacon, according to the stipulations mentioned in a certain memorandum or agreement of the twenty-fourth of September 1762, made previous to the marriage of the said James Innes and Sarah his wife; in consideration whereof, and for other considerations hereinbefore mentioned, he the said James Innes, for himself, his heirs, executors and administrators, doth hereby covenant, promise, and agree, to and with the said Edmund Lacon, his executors and administrators, that it shall and may be lawful to and for the said Edmund Lacon, his executors and administrators, to deduct and defalk out of the said yearly sum of one hundred pounds the clear yearly sum of fifty pounds of like lawful money, to be by him or them paid and applied during such separation as aforesaid, for and towards the support and maintenance of the said Sarah Innes, and for her sole and separate use and benefit, and to be paid into her own proper hands, and her receipt in writing to be from time to time a sufficient discharge and discharges for the same; which said yearly sum of fifty pounds is to commence and be payable unto the said Sarah Innes from Michaelmas Day last; and lastly, it is hereby agreed, by and between the said parties to these presents, that upon the said Edmund Lacon, his executors or administrators, producing and delivering from time to time (half-yearly) the receipt of the said Sarah Innes for the sum of twenty-five

five pounds (being the half-yearly payment of the sum of fifty pounds) unto the said James Innes, or unto William Innes, of Lime-street-square, London, merchant (the agent for the time being of the said James Innes), or to such other person from time to time as he the said James Innes shall appoint, that then and in such case such receipt, from time to time, shall be a sufficient discharge to the said Edmund Lacon for the said twenty-five pounds, (part of the said sum of fifty pounds hereby agreed to be annually paid or allowed her for the purposes aforesaid, and that upon the said Edmund Lacon, his executors or administrators, paying the other twenty-five pounds half-yearly) unto the said William Innes, for the use of the said James Innes, or to whom else he the said James Innes shall appoint, that then the receipt of the said William Innes, or of such other person to be appointed by the said James Innes for the time being, shall be a sufficient discharge for the said twenty-five pounds to the said E. L. his executors or administrators, in the same manner as if such receipt had been given and signed by the said James Innes, his executors or administrators: Provided always, that in case the said James Innes and Sarah his wife shall at any time hereafter cohabit and live together for the space of fourteen days and upwards, then and in such case the present indenture, in respect of the said yearly payment of the said sum of one hundred pounds, and of such debts as shall, from and after the time of such cohabitation as aforesaid, be by her the said Sarah Innes contracted, shall cease, determine, and be utterly void and of no effect, any thing hereinbefore contained to the contrary thereof notwithstanding: In witness the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written, which being read and heard, the said Edmund saith, that the said James Innes ought not to have his aforesaid action thereof maintained against him, because protesting that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said James Innes to have his aforesaid action thereof maintained against him the said Edmund; protesting also, that on the twenty-fifth day of March 1768, in the said declaration mentioned, fifty pounds for two half-yearly payments of the said yearly sum of one hundred pounds, did not become due and owing from the said Edmund to the said James, as the said James hath in his declaration aforesaid above in that behalf alledged: for plea in this behalf the said Edmund saith, that the said Sarah Innes, in the said declaration and in the indenture aforesaid named, on the day of exhibiting of the bill of the said James against, was, and from thence hitherto hath been, and still is living and in full life, to wit, at Westminster aforesaid, and that the said James and Sarah his wife have, from the time of the making of the indenture aforesaid until and upon the said twenty-fifth day of March in the year of Our Lord 1768, in the said declaration above mentioned, and from thence until the day of exhibiting of the bill of the said James against the said Edmund, continued to live sepa-

Protesting that the two half-yearly payments did not become due.

Plaintiff and wife continue to live separate.

By reason where-
of she became
entitled to re-
ceive the annui-
ty of 100l. ac-
cording to the
tenor of the ar-
ticles.

rate and apart from each other, according to the tenor, true in-
tent and meaning of the said indenture; and that, by reason of the
said premises, and according to the tenor, true intent and mean-
ing of the said indenture, the said Sarah Innes the wife of the
said James Innes, became intitled to have and receive into her pro-
per hands, and for her sole and separate use and benefit, out of the
said yearly sum of one hundred pounds in the said indenture men-
tioned, accruing and growing due from Michaelmas-day in the
year of Our Lord 1766, until the day of exhibiting the bill of the
said James against the said Edmund, the clear yearly sum of fifty
pounds, to wit, by half-yearly payments, and to give to him the
said Edmund, from time to time, receipts in writing for all and
every such sum and sums of money, amounting to the sum of fifty
pounds yearly and no more, as he the said Edmund should, under
and by virtue of the said indenture, pay to her the said Sarah Innes
according to the tenor, true intent and meaning of the said in-
denture: And the said Edmund further saith, that under and by
virtue of the indenture aforesaid, after the making of the said in-
denture, and before the day of exhibiting the bill of the said James
against the said Edmund, to wit, on the twenty-ninth day of Sep-
tember 1767, to wit, at Westminster aforesaid, there became due,
and under and by virtue of the indenture aforesaid, from him the
said Edmund the sum of fifty pounds only and no more, for half
the yearly sum of one hundred pounds in the said indenture
mentioned, and which, according to the tenor of the said inden-
ture, was payable in manner following, to wit, the sum of twen-
ty-five pounds, one half of such half-yearly payment unto the said
James, and twenty-five pounds, residue of the said half-yearly
payment, to the said S. I. for her sole and separate use and bene-
fit; and that the said sum of fifty pounds, so being due as aforesaid
for such half-yearly payment, and the same being payable in man-
ner aforesaid, he the said Edmund afterwards, and before the day of
the exhibiting of the bill of the said James against him the said Edmund,
to wit, on the day and year last aforesaid, at Westminster aforesaid,
did pay the one half of such half-yearly payment, to wit, the said
sum of twenty-five pounds, to which the said James was entitled
in form aforesaid unto the said James, according to the tenor,
true intent and meaning of the aforesaid indenture, and of the co-
venant of the said Edmund so by him made in this behalf as afore-
said, to wit, at Westminster aforesaid: And the said Edmund fur-
ther saith, that he the said Edmund afterwards, and before the
day of exhibiting the bill of the said James against the said Ed-
mund, to wit, on the day and year last aforesaid, at Westminster
aforesaid, did pay the other half of the said half-yearly payment,
to wit, the sum of twenty-five pounds, being the residue of the
said half-yearly payment, unto the said Sarah Innes, and into her
proper hands, and to and for her sole and separate use and benefit,
according to the tenor, true intent and meaning of the said inden-
ture, and of the aforesaid covenant of the said Edmund so by him
made in this behalf as aforesaid; and that the said Sarah Innes
then

then and there, to wit, on the day and year last aforesaid, at Westminster aforesaid, according to and by virtue of the power given and granted to her the said Sarah Innes in and by virtue of the said indenture aforesaid, did give to the said Edmund a receipt for the said sum of twenty-five pounds, so being the half of such half-yearly payment; and that he the said Edmund did afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, produce and deliver to the said William Innes, in the said indenture mentioned, the agent of the said James, the said receipt of the said Sarah Innes for the said last-mentioned sum of twenty-five pounds, being such half-yearly payment of the said sum of fifty pounds, to which the said Sarah Innes was so intitled in form aforesaid, he the said James, not having made any appointment for the delivery of the receipt aforesaid to any other person whomsoever, according to the tenor, true intent and meaning of the said indenture, and of the aforesaid covenant of the said Edmund so by him made in this behalf as aforesaid, to wit, at Westminster aforesaid: And the said Edmund further saith, that under and by virtue of the indenture aforesaid, after the making of the said indenture, and before the day of exhibiting of the bill of the said James against the said Edmund, and after the making of the payment last aforesaid, to wit, on the twenty-fifth day of March, in the year, &c. 1768, to wit, at Westminster aforesaid, there became due under and by virtue of the indenture aforesaid, from him the said Edmund, the sum of fifty pounds only and no more, for half the yearly sum of one hundred pounds in the said indenture mentioned, and which, according to the tenor of the said indenture, was payable in manner following, to wit, the sum of twenty-five pounds, one half of such half-yearly payment, unto the said James, and twenty-five pounds residue of the said half-yearly payment, to the said Sarah Innes, for her sole and separate use and benefit; and that the said sum of fifty pounds, so being due as aforesaid for such half-yearly payment, and the same being payable in manner aforesaid, he the said Edmund afterwards, and before the day of exhibiting of the bill of the said James against him the said Edmund, to wit, on the day and year last aforesaid, at Westminster aforesaid, did pay the one half of such half-yearly payment, to wit, the said sum of twenty-five pounds, to which the said James was intitled in form last aforesaid unto the said James, according to the tenor, true intent and meaning of the aforesaid indenture, and of the covenant of the said Edmund so by him made in this behalf as aforesaid, to wit, at Westminster aforesaid: And the said Edmund further saith, that he the said Edmund afterwards, and before the day of the exhibiting of the bill of the said James against the said Edmund, to wit, on the day and year last aforesaid, at Westminster aforesaid, did pay the other half of the said half-yearly payment, to wit, the sum of twenty-five pounds, being the residue of the said half-yearly payment, unto the said Sarah Innes, into her proper hands, and to and for her sole and separate use and benefit, according to the tenor, true

intent and meaning of the said indenture, and of the aforesaid covenant of the said Edmund so by him made in this behalf as aforesaid; and that the said Sarah Innes then and there, to wit, on the day and year last aforesaid, at Westminster aforesaid, according to and by virtue of the power given and granted to her the said Sarah Innes in and by virtue of the said indenture aforesaid, did give to the said Edmund a receipt for the said sum of twenty-five pounds, so being the half of such half-yearly payments; and that he the said Edmund did afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, produce and deliver to the said James the said receipt of the said Sarah Innes for the said last-mentioned sum of twenty-five pounds, to which the said Sarah was so entitled in form last aforesaid, according to the tenor, true intent and meaning of the said indenture, and of the aforesaid covenant of the said Edmund so made by him in this behalf as aforesaid; and this he the said Edmund is ready to verify: wherefore he prays judgment if the said James ought to have his aforesaid action thereof maintained against him.

G. NARES,

Imparlance.

And hereupon the said James prayeth leave to reply to the plea of the said Edmund here until Friday next after the morrow of the Holy Trinity, and he hath it, &c.; the same day is given to the said Edmund here, &c.; and now at this day cometh here as well the said Edmund in his proper person, as the said James by his attorney aforesaid; and upon this the said James saith, that he, by reason of any thing by the said Edmund above in pleading alledged, ought not to be barred from having his aforesaid action against the said Edmund, because he saith, that he the said Edmund did not pay to the said James the said several sums of twenty-five pounds and twenty-five pounds in manner and form as the said Edmund hath above in pleading alledged; and this he prays may be enquired of by the country.

R. LEIGH.

Rejoinder.

And the said Edmund doth so likewise: therefore the sheriff is commanded to cause to come here on Wednesday next after three weeks of the Holy Trinity; twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Declaration in covenant, in breach of an agreement to accept a lease of the plaintiff, of premises, when prepared, the lease was prepared, but defendant refused to execute the same.

MIDDLESEX, to wit. Joseph Nelson complains of Richard Towne, being, &c. in a plea of breach of covenant: for that whereas the said Joseph, before and at the time of the making of the agreement hereafter mentioned, was lawfully possessed of the several premises in such agreement and hereafter mentioned, with the appurtenances, for the then residue and remainder of a certain term of years thentofore thereof granted, and still subsisting and unexpired, and whereof twenty-one years and more would be and were to come and unexpired on the twenty-fifth day of March next, after the making of the said agreement and now last past; and being

being so thereof possessed, whilst he was so possessed, to wit, on, &c. at, &c. by a certain agreement then and there made between the said Joseph, by the name of, &c. of the one part, and Richard, by the name of, &c. of the other part; one part of which agreement, sealed with the seal of the said Richard, the said Joseph now brings into court here, the date whereof is the day and year last aforesaid, the said Joseph did (amongst other things) promise, &c. &c. [set out the agreement] as by the said agreement, reference being thereto had, will more fully appear: And the said Joseph avers, that in pursuance of the said agreement the said Joseph afterwards, and before the twenty-fifth day of March next, after the making thereof, to wit, on, &c. at, &c. caused to be prepared and engrossed on parchment duly stamped, a good and valid indenture of lease of the said premises in the said agreement mentioned, for the said term so thereby agreed to be granted as aforesaid, and containing therein such covenants and agreements as aforesaid, together with a counterpart of such lease, according to the tenor and effect of the said agreement; and afterwards, to wit, on, &c. at, &c. duly executed the said lease, and then and there tendered the same, together with such counterpart thereof as aforesaid, unto him the said Richard, and then and there required him to execute such counterpart thereof accordingly, and upon such execution thereof to pay unto him the said Joseph the said sum of fifty pounds in the said agreement mentioned, and thereby agreed to be paid to him as aforesaid, as and for the expence of erecting and building the said double coach-house and room over the same in manner aforesaid; yet he the said Richard did not, nor would then and there, at the time of the said Joseph's so executing such lease as aforesaid, or at any other time whatsoever, then and there execute and deliver, nor hath he as yet executed or delivered unto him the said Joseph the said or any other counterpart of such lease, nor did he then and there, or at any other time whatsoever, pay or cause to be paid, nor hath as yet paid, or caused to be paid to the said Joseph, the said sum of fifty pounds in the said agreement mentioned, and thereby agreed to be paid as and for the expence of erecting and building the said double coach-house and room over the same in manner aforesaid, but then and there refused so to do, or to accept such lease, and therein wholly failed and made default, contrary to the tenor and effect of the said agreement, and of the said covenant so by him in that behalf made as aforesaid: and so the said Joseph says, that he the the said Richard (although often requested) hath not kept his said covenant so by him made with the said Joseph in this behalf as aforesaid, but hath broken the same, and to keep the same with the said Joseph hath hitherto wholly refused, and still refuses so to do; wherefore the said Joseph saith, that he is injured, and hath sustained damages to the value of two hundred pounds, and therefore he brings his suit, &c.

V. LAWES.

328 ARTICLES OF CO-PARTNERSHIP TO CARRY ON TRADE,

Covenant in the
exchequer by
baron and feme,
on articles of a
greement to be-
come a co-part-
ner in trade with
a feme sole, accord-
ing to the custom
of the city of Lon-
don, carrying on
the trade of a
print-feller, car-
ver, and gilder.

LONDON, to wit. John Walker and Elizabeth Walker, debtors and complainants of our sovereign lord the present king, come before the barons of the exchequer at Westminster, on the sixth day of November in the same term, by Richard Edmunds their attorney, and complain by bill against Joseph Harris, present here in court the same day, of a plea of covenant broken: for that whereas, by a certain agreement made the sixth day of August, in the year of Our Lord 1792, to wit, at London aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap, between the said John and Elizabeth, by the respective names and descriptions of John Walker, of Cornhill, in the city of London, printfeller, carver, and gilder, and Elizabeth his wife, of the first part, one Thomas Morgan, by the name and description of Thomas Morgan, of the Inner Temple, London, esquire, of the second part, and the said Joseph Harris, by the name and description of Joseph Harris, of the city of Bristol, sugar refiner, of the third part (one part of which said agreement, sealed with the seal of the said Joseph, the said John and Elizabeth now bring here into court, the date whereof is the same day and year in that behalf aforesaid, reciting that the said John Walker had, by a certain deed or writing, bearing date the twenty-third day of June, which was in the year of Our Lord 1790, assigned, transferred, and made over unto the said Thomas Morgan in trust, for and in behalf of the said Elizabeth Walker his wife, and for her sole and separate use and benefit, and for no other use and purpose whatsoever, all and singular his then stock, utensils, and implements in trade, monies, books, debts, and all other properties and effects whatsoever and wheresoever to him the said John Walker then belonging, and therein for ever quitted all claim and demand whatsoever to, or interest in the said trade or business, or any part thereof, or profits arising therefrom (except as is therein excepted), reference thereunto being had would more fully and at large appear; and further reciting that the said trade or business was then carried on by the said E. W. as her sole right and property, and for her sole benefit and advantage, according to the custom of the city of London (excepting as before excepted), and as was thereby acknowledged by the said John Walker her said husband, it is by the said agreement now brought here into court, witnessed that the said E. W. had, by and with the advice and consent of her said husband, and also by and with the advice and consent of the said Thomas Morgan (party thereto), agreed to take the said Joseph Harris as a co-partner in the said trade or business of printfeller, carver, and gilder, and all and every the parts and branches thereof, and to be carried on in the dwelling-house and shop of the said Elizabeth Walker, situate in Cornhill aforesaid, and in the joint names of them the said Elizabeth Walker and Joseph Harris, for and during the term of fourteen years, or until the expiration of the lease of the house and premises then in the occupation of the said John Walker, and also a moiety or half part of the interest in the said lease, to commence from and after the twenty-ninth day of September then next ensuing the date there-
of,

of, on the terms and the considerations therein mentioned, that is to say, the said Joseph Harris should pay to the said Elizabeth Walker, on or before the twenty-ninth day of September then next ensuing the date thereof, the sum of three hundred pounds, as a premium or fee to be admitted into a co-partnership with her into the said trade or business, and to be entitled to, and receive for his own separate use and benefit one full moiety or half share of the benefits and profits that might arise thereupon; and it was by the said agreement further agreed, that the stock, utensils, and implements in trade of the said Elizabeth Walker should be valued, and an account thereof taken by two indifferent persons, one of whom should be chosen by the said Elizabeth Walker, and the other by the said Joseph Harris, or by any other mode of valuation in which they might mutually agree, the amount of the stock, utensils, and implements so valued should be taken into the said co-partnership, and should be accounted and acknowledged to be the capital of the said Elizabeth Walker; and the said Joseph Harris did also thereby agree to advance and bring into the said co-partnership such sum or sums of money as should be equal to the amount of the value of the stock, &c. of the said Elizabeth Walker, and which should be advanced and paid in such proportions, and at such times as might be required, for the use and benefit of the joint concern, the said Joseph Harris allowing or paying interest after the rate of five pounds per cent. for such sum or sums as should remain unpaid from time to time after the twenty-ninth of September aforesaid, until the whole should be advanced or paid, and the same should be acknowledged or accounted to be his capital as by the said agreement now brought here into court, reference being thereto had may more fully appear: And the said John and Elizabeth in fact say, that although the said Elizabeth well and truly performed and fulfilled every thing in the said agreement mentioned on her part and behalf to be performed and fulfilled, yet protesting that the said Joseph hath not performed and fulfilled any thing in the said agreement mentioned on his part and behalf to be performed and fulfilled, the said John and Elizabeth in fact say, that the said Joseph did not pay to the said Elizabeth, on or before the twenty-ninth day of September next ensuing the date of the said agreement, that is to say, the twenty-ninth day of September, in the year of Our Lord 1792, nor hath he at any time since paid to the said Elizabeth the said sum of three hundred pounds, or any part thereof, as a premium or fee to be admitted into the said co-partnership with her into the said trade or business, or on any other account whatsoever, according to the form and effect of the said agreement, and of the covenant of the said Joseph in this behalf made as aforesaid (although the said Elizabeth, from the time of the making of the said agreement, always hitherto hath been ready and willing to take the said Joseph into the said co-partnership), but hath wholly neglected and omitted so to do, contrary to the form and effect of the said agreement, and of the covenant of the said Joseph in this behalf made

as

COVENANT. PLEA IN DISCHARGE,

as aforesaid: And the said John and Elizabeth further in fact says, that she the said Elizabeth heretofore, to wit, on the twenty-second day of September, in the year of Our Lord 1792, at London aforesaid, in the parish and ward aforesaid, did cause due notice to be given to the said Joseph, that she the said Elizabeth would, on the seventeenth day of October then next ensuing (the same being a reasonable and proper time in that behalf) cause the stock, utensils, and implements in trade of her the said Elizabeth to be valued, and an account thereof taken by one R. L. an indifferent person chosen by the said Elizabeth, and did then and there, to wit, on the twenty-second day of September, in the year last aforesaid, at London aforesaid, in the parish and ward aforesaid, require the said Joseph to chuse some indifferent person to join in the valuation and account of the said stock, utensils, and implements of trade on the part of him the said Joseph, according to the tenor, true intent and meaning of the said agreement, and of the covenant of the said Joseph in this behalf made as aforesaid; but the said John and Elizabeth further say, that the said Joseph did not, on the said seventeenth day of October, in the year last aforesaid, or at any other time, chuse any person to join with the said R. L. in the valuation and account of the said stock, utensils, and implements in trade, nor point out or propose any other mode of valuation whatsoever, but altogether neglected, omitted, and refused respectively so to do, and still doth neglect, omit, and refuse, contrary to the tenor, true intent and meaning of the said agreement, and of the covenant of the said Joseph in this behalf made as aforesaid; and so the said John and Elizabeth say, that the said Joseph, although often requested, hath not kept with the said Elizabeth the covenant made between the said Joseph and Elizabeth, but hath broken the same, and to keep the same with the said Elizabeth hath hitherto wholly and still doth refuse, to the damage of the said John and Elizabeth of five hundred pounds, whereby they are the less able to satisfy his said majesty the debt which they owe to his said majesty at his said exchequer; and therefore they bring this suit, &c. Pledges, &c.

Plea that no articles of co-partnership, with necessary additional covenants have been legally made according to the effect of the indenture, for the performance thereof.

AND the said Joseph Harris, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the said agreement, and it is read to him in these words, to wit: [this agreement, made this, &c.] which being read and heard, the said Joseph says, that the said John and Elizabeth ought not to have or maintain their aforesaid action thereof against him, because he says, that no articles of co-partnership covenant or agreement in the said declaration mentioned, have at any time been legally made with such additional covenants as might be necessary for the due performance thereof, according to the form and effect of the said indenture; and this he is ready to verify: wherefore he prays judgment if the said John and Elizabeth ought to have or maintain their aforesaid action thereof against him,

him, &c. : And for further plea in this behalf, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, the said Joseph says, that the said John and Elizabeth ought not to have or maintain their aforesaid action thereof against him, because he says, that a moiety or half part of the said lease in the said agreement mentioned, to commence from and after the twenty-ninth day of September then next ensuing the date of the said agreement, hath not any time hitherto been made or assigned by the said John and Elizabeth, or either of them, to the said Joseph ; and this he is ready to verify : wherefore he prays judgment if the said John and Elizabeth ought to have or maintain their aforesaid action thereof against him : And for further plea in this behalf, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, the said Joseph says, that the said John and Elizabeth ought not to have or maintain their aforesaid action thereof against him, because he says, that before the execution of the said agreement in the said declaration mentioned, to wit, on the fourth day of August, in the year of Our Lord 1792, at London aforesaid, in the parish and ward aforesaid, the said Elizabeth falsely and fraudulently represented to the said Joseph, that her said trade or business of a printseller, carver, and gilder, in the said declaration mentioned, netted the clear annual sum of eight hundred pounds, and was capable of being considerably increased, in order to induce the said Joseph to enter into and execute the said agreement in the said declaration mentioned : And the said Joseph further saith, that by means of such false and fraudulent representations, to wit, on the sixth day of August in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, he the said Joseph was fraudulently drawn in and induced to execute the said agreement in the said declaration mentioned, and for no other cause whatsoever, when in truth and in fact the said trade or business in the said declaration mentioned never did nett the clear annual sum of eight hundred pounds, wherefore the said Joseph says, that the said agreement is void and of none effect ; and this he is ready to verify : wherefore he prays judgment if the said John and Elizabeth ought to have or maintain their aforesaid action thereof against him, &c.

G. WOOD.

That moiety of lease hath not been assigned.

That defendant was drawn in by plaintiffs, who falsely represented trade to nett 800l. per annum.

And the said John and Elizabeth, as to the plea of the said Joseph first above pleaded in bar, say, that the said plea and the matters therein contained, are not sufficient in law to bar the said John and Elizabeth from having and maintaining their aforesaid action thereof against the said Joseph ; to which said plea, in manner and form as the same is above made and set forth, they the said John and Elizabeth are not under the necessity, or in any wise bound by the laws of this realm to answer ; and this they are ready to verify : wherefore, for want of a sufficient plea in this behalf, they the said John and Elizabeth pray judgment and their damages

General demurrer.

damages on occasion of the premises, to be adjudged to them, &c. and the said John and Elizabeth, as to the plea of the said Joseph by him secondly above pleaded in bar, say, that the said plea and the matters therein contained are not sufficient in law to bar the said John and Elizabeth from having and maintaining their aforesaid action thereof against the said Joseph, to which said second plea, in manner and form as the same is above made and set forth, they the said John and Elizabeth are not under the necessity, or in any wise bound by the law of the realm to answer; and this they are also ready to verify: wherefore, for want of a sufficient plea in this behalf, they the said John and Elizabeth pray judgment and their damages on occasion of the premises to be adjudged to them, &c.; and the said John and Elizabeth, as to the plea of the said Joseph lastly above pleaded in bar, say, that by reason of any thing in that plea contained, they the said John and Elizabeth ought not to be barred from having and maintaining their aforesaid action against the said Joseph, because they say, that the said Elizabeth did not make such representation to the said Joseph as the said Joseph hath above in his said last plea alleged; and this the said John and Elizabeth prays may be enquired of by the country, &c. &c.

P. DAUNCEY.

Joinder in demurrer.

And the said Joseph says, that the plea aforesaid by him the said Joseph, in manner and form aforesaid first above pleaded, and the matters in the same contained, are good and sufficient in law to bar them the said John and Elizabeth from having and maintaining their actions aforesaid thereof against him the said Joseph; which said plea, and the matter therein contained, the said Joseph is ready to verify, and prove as the court, &c.; and because the said John and Elizabeth do not answer to that plea, nor the same hitherto deny the said Joseph as before, prays judgment, and that the said John and Elizabeth may be barred from having and maintaining their action aforesaid thereof against him the said Joseph: And the said Joseph says, that the plea aforesaid by him the said Joseph in manner and form aforesaid secondly above pleaded, and the matters in the same contained, are good and sufficient in law to bar them the said John and Elizabeth from having and maintaining their action aforesaid thereof against him the said Joseph; which said last-mentioned plea, and the matters therein contained, the said Joseph is ready to verify and prove as the court, &c.; and because the said John and Elizabeth do not answer to that plea, nor the same hitherto deny the same Joseph as before, prays judgment, and that the said John and Elizabeth may be barred from having and maintaining their action aforesaid thereof against him the said Joseph, &c. Issue on third plea.

G. WOOD.

Judgment on demurrer for plaintiff.

Easter

Easter Term, in the twenty-sixth year of the reign of king George the Third.

MIDDLESEX, to wit. Richard Greenwood complains of James Crookshanks being in the custody of the marshal of the marshalsea of our sovereign lord the now king, before the king himself, of a plea of covenant broken: for that *whereas* by articles of agreement made, concluded, and agreed upon the twenty-first day of July, in the year of Our Lord 1783, at the parish of St. Mary-le-bone, in the county of Middlesex, between the said Richard Greenwood, by the name and description of Richard Greenwood, of Bird-street, Oxford-street, in the parish of St. Mary-le-bone, in the county of Middlesex, pawnbroker, of the one part; and the said James Crookshanks, by the name and description of James Crookshanks, of the same place, parish, and county aforesaid, pawnbroker, of the other part (which said agreement, sealed with the seal of the said James, the said Richard now brings here into court, the date whereof is the same day and year aforesaid); it was thereby *witnessed* that *whereas* they the said Richard Greenwood and James Crookshanks had used, exercised, and carried on the trade or business of pawnbrokers for several years then last past; and for the better understanding each others intentions in a more clear and better way and manner in future, it was agreed by and between the said parties that, in future, neither of the said parties should, if in town, be absent from their said business, and of attending their shop on any Saturday evening from four until twelve, under the penalty or forfeiture of the sum of two pounds two shillings, such forfeitures to be demanded by the party at home of and from the party so absenting himself; and the said parties did by the said agreement agree to pay the same, and all other forfeitures therein mentioned and contained, let who would be the defaulter; *and* it was thereby further agreed by and between the said parties, that each party should, when desirous of being absent for any space of time exceeding one day from their said business, give the other party proper notice thereof, at least one day, of his intentions, and have the consent of the other before he should be at liberty to leave the said shop and business, under the forfeiture of five shillings; *and further*, that one or both of the said parties should and would attend to see the said shop opened from March the twenty-fifth to September the twenty-ninth in every year at six o'clock every morning, (Sundays excepted) under the penalty of ten shillings for each omission, and under the like penalty from the twenty-ninth of September to the twenty-fifth of March in every year, to see the said shop opened and fit for the dispatch of business at eight o'clock in the morning; and that each party should take his alternate turn with the other each and every day with respect to going out or being absent from the said shop and business; and that if the party whose turn it was to attend should absent himself without the consent of the other, on such day or time, he should forfeit for each offence the penalty of ten shillings; *and further*, that if either of the said parties whose turn it was to attend should absent himself from the time of opening the shop to shutting

Declaration on articles of agreement by co-partners in trade (pawnbrokers), for the better future regulation of their trade.

shutting it during the whole day from the said premises, the time or space of fifteen minutes, except such party was necessarily obliged to be absent by being summoned before any magistrate, or to provide for the family in eating or drinking, the defaulter should in that case (except as was therein excepted), forfeit to the other party for each offence the sum of ten shillings; *and* it was also agreed by and between the said parties, that the time of closing the shop business should, during the summer six months (that is to say), from March to September in every year the shop should, with the aforesaid exception, be shut every evening at nine of the clock; *and* that neither of the said parties should make any journey into the country, or elsewhere, without giving the other party due notice what time he should return, *and* that such party not returning within two days from the time he appointed to return, unless hindered by illness, or some unforeseen accident, should forfeit to the other for every breach of offence the sum of one pound one shilling; *and lastly, it was agreed* by and between the said parties, that if either party made default in not setting down on a slate, or book kept for that purpose, any sum or sums of money, goods, or wearing apparel, or any thing or things taken from or out of the said premises by either of the said parties, or by their means, consent, or privity, or if either of them should at various times draw from, or take from out of the said shop or premises, or from the box or till in the said shop any money or things, that on proof of any such things or money being taken away or drawn, the party taking away any such things, or causing the same to be taken or drawn away, and should make such default in setting down the same, or should not duly account for the same, or for goods bought for the use of the said business, shall forfeit to the other the sum of three guineas for every such neglect or default; *and* for the due performance and satisfaction of the said agreement, each of the said parties did thereby for himself, his executors, and administrators, covenant and agree with the other, his executors, and administrators, well and truly to observe and perform all the agreements therein mentioned; and in default of any one article well and truly to pay such penalty, forfeiture, sum and sums of money to the other, as in and by the said agreement is mentioned and expressed to be paid by the defaulter; *as* by the said articles of agreement, reference being thereto had, amongst other things, will more fully and at large appear: And although the said Richard hath well and truly performed and fulfilled all and singular the covenants and agreements in the said articles of agreement mentioned, on his part and behalf to be done and performed; yet protesting that the said James Crookshanks hath not performed and fulfilled any thing in the said articles of agreement mentioned, on his part and behalf to be done and performed, in fact the said Richard says, that after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the twentieth day of August, in the year

1st Breach.

of Our Lord 1784, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from out of the said shop and premises, in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, a certain hat, to wit, of the value of five shillings, being part of the goods belonging to and in the custody of the said Richard and James, as co-partners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same, according to the form and effect of the said articles of agreement; but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement, whereby the said James forfeited and became liable to pay to the said Richard the sum of three pounds three shillings for such neglect or default: And the said Richard further says, that ^{2d Breach.} after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the fourteenth day of October, in the said year of Our Lord 1784, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from out of the said shop and premises in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, certain plates, to wit, twelve pewter plates, to wit, of the value of six shillings, being part of the goods belonging to and in the custody of the said Richard and James as co-partners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same according to the form and effect of the said articles of agreement, but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement; whereby the said James forfeited and became liable to pay to the said Richard the further sum of three pounds and three shillings for such neglect or default: And the said Richard further says, that ^{3d Breach.} after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the said fourteenth day of October, in the said year of Our Lord 1784, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from out of the said shop and premises in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, a certain metal snuff box, to wit, of the value of three shillings, being part of the goods belonging to and in the custody of the said Richard and James, as co-partners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same according to the form and effect of the

4th Breach.

the said articles of agreement; but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement, whereby the said James forfeited and became liable to pay to the said Richard the further sum of three pounds and three shillings for such neglect or default: And the said Richard further says, that after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the said fourteenth day of October, in the said year of Our Lord 1784, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from out of the said shop and premises, in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, a certain pair of *silver* tea tongs, to wit, of the value of eight shillings, being part of the goods belonging to and in the custody of the said Richard and James, as co-partners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same according to the form and effect of the said articles of agreement; but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement, whereby the said James forfeited and became liable to pay to the said Richard the further sum of three pounds and three shillings for such neglect or default: And the said Richard further says, that after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the twentieth day of January, in the year of Our Lord 1785, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from out of the said shop and premises in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, two calico shirts, two linen shirts, and one pair of cotton hose, to wit, of the value of sixteen shillings, being part of the goods belonging to and in the custody of the said Richard and James as co-partners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same, according to the form and effect of the said articles of agreement; but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement, whereby the said James forfeited and became liable to pay to the said Richard the further sum of three pounds and three shillings for such neglect or default: And the said Richard further says, that after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade

5th Breach.

trade or business of pawnbrokers, to wit, on the twentieth day of January, in the year of Our Lord 1785, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from out of the said shop and premises, in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, a certain breast buckle, to wit, of the value of four shillings, being part of the goods belonging to and in the custody of the said Richard and James, as copartners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same according to the form and effect of the said articles of agreement; but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement, whereby the said James forfeited and became liable to pay to the said Richard the further sum of three pounds and three shillings for such neglect or default: And the said Richard further says, that after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the twentieth day of January, in the year of Our Lord 1785, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from out of the said shop and premises, in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, a certain pair of knee buckles, to wit, of the value of three shillings, being part of the goods belonging to and in the custody of the said Richard and James, as copartners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same according to the form and effect of the said articles of agreement; but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement, whereby the said James forfeited and became liable to pay to the said Richard the further sum of three pounds and three shillings for such neglect or default: And the said Richard further says, that after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the twentieth day of January, in the year of Our Lord 1785, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from and out of the said shop and premises, in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, a certain oval box, with a stone in the top, to wit, of the value of three shillings, being part of the goods belonging to and in the custody of the said Richard and James, as copartners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account

7th Breach.

8th Breach.

9th Breach.

10th Breach.

11th Breach.

count for the same according to the form and effect of the said articles of agreement; but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement, whereby the said James forfeited and became liable to pay to the said Richard the further sum of three pounds and three shillings for such neglect or default: And the said Richard further says, that after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the eighteenth day of January, in the year of Our Lord 1785, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from and out of the said shop and premises, in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, a certain pair of shoe buckles, to wit, of the value of fifteen shillings, being part of the goods belonging to and in the custody of the said Richard and James, as copartners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same according to the form and effect of the said articles of agreement; but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement, whereby the said James forfeited and became liable to pay to the said Richard the further sum of three pounds and three shillings for such neglect or default: And the said Richard further says, that after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the twenty-second day of January, in the year of Our Lord 1785, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from and out of the said shop and premises, in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, a certain shirt pin, with a hair device thereon, to wit, of the value of three shillings, being part of the goods belonging to and in the custody of the said Richard and James, as copartners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same according to the form and effect of the said articles of agreement; but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement, whereby the said James forfeited and became liable to pay to the said Richard the further sum of three pounds and three shillings for such neglect or default: And the said Richard further says, that after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the

the twenty-sixth day of January, in the year of Our Lord 1785, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from and out of the said shop and premises, in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, a certain stone ring, with a hair device, to wit, of the value of seven shillings, being part of the goods belonging to and in the custody of the said Richard and James, as copartners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same according to the form and effect of the said articles of agreement; but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement, whereby the said James forfeited and became liable to pay to the said Richard the further sum of three pounds and three shillings for such neglect or default: [Add thirteen other breaches for articles taken at different times to the amount of seventy-five pounds twelve shillings] Yet the said James hath not yet paid to the said Richard the said sum of seventy-five pounds and twelve shillings, or any part thereof, according to the form and effect of the said articles of agreement; but on the contrary thereof, he the said James hath hitherto altogether refused, and still doth refuse, to pay the same, contrary to the force, form, and effect of the said articles of agreement; and so the said Richard saith, that he the said James hath not kept with him the covenants so made between them as aforesaid, but hath broken the same, and to keep the same with the said Richard, the said James hath hitherto wholly refused, and still doth refuse, to the damage of the said Richard of one hundred pounds; and therefore he brings suit, &c. Pledges, &c.

GEO. WOOD.

WORCESTERSHIRE. Ann Hill complains of Thomas Constable, being, &c. of the sheriff of the county of W. by virtue of a certain writ, &c. in a plea of breach of covenant; for that whereas, by a certain indenture made, &c. at, &c. between the said Thomas of the one part, and the said Ann of the other part (one part of which said indenture, sealed with the seal of the said Thomas, and bearing date the day and year aforesaid, the said Ann now brings into court here), he the said Thomas, for and in consideration of the sum of twenty-five pounds of lawful, &c. to him in hand paid by the said Ann, did grant, bargain, sell, and demise unto the said Ann, her executors, administrators, and assigns, certain premises in the said indenture particularly mentioned and set forth, to have and to hold the same, with the appurtenances unto the said Ann, her executors, administrators, and assigns, from the day next before the date of the said indenture, for

Declaration in covenant, for not paying the plaintiff a sum of money advanced by him on certain premises, contrary to covenant.

and during, and unto the full end and term of one thousand years, without impeachment of or for any manner of waste, yielding and paying therefore the rent of one pepper corn on the feast of St. Michael the Archangel in every year, if the same should be lawfully demanded, provided always, and the said indenture was and is upon condition, nevertheless, that if the said Thomas, his heirs, executors, and administrators, should well and truly pay, or cause to be paid unto the said Ann, her executors, administrators, and assigns, the full sum of twenty five pounds of lawful, &c. upon demand, without any deduction, defalcation, or abatement out of the same or, any part thereof, in respect of any taxes, charges, assessments, payments, or other matter, cause, or thing whatsoever taxed, charged, or imposed, or to be taxed, charged or imposed upon the premises aforesaid; or of any of them, then and in such case, and at all times from thenceforth, the said indenture, and the term and estate thereby granted, and every clause and matter therein contained, should cease, determine, and be utterly void to all intents and purposes thereof, any thing in the said indenture contained to the contrary notwithstanding; and the said Thomas did in and by the said indenture for himself, his heirs, executors, and administrators, covenant, promise, grant, and agree to and with the said Ann, her executors, administrators, and assigns, in manner following, that is to say, that he the said Thomas, his heirs, executors, or administrators, should and would well and truly pay, or cause to be paid unto the said Ann, her executors, administrators, and assigns, the sum of twenty-five pounds, at the time and in manner and form aforesaid, without any deduction or abatement out of the same, or any part thereof, for taxes or otherwise as aforesaid, as by the said indenture, reference being thereto had, will amongst other things more fully appear: And the said Ann in fact further saith, that although she the said Ann after the making of the said indenture, and before the exhibiting of the bill of her the said Ann in this behalf, to wit, on, &c. did request and demand payment of, and then and there required the said Thomas to pay to her the said Ann the said sum of twenty-five pounds in the said indenture mentioned; yet the said Thomas did not when the said sum of twenty-five pounds was so demanded and required of him as aforesaid, pay, or cause to be paid unto her the said Ann the said sum of twenty-five pounds, or any part thereof, but then and there wholly refused so to do, and suffered and permitted the same to remain and continue, and the same is still wholly due, owing, in arrear, and unpaid from the said Thomas to the said Ann, contrary to the tenor and effect, true intent, and meaning of the aforesaid indenture, and the covenant of the said Thomas in that behalf made as aforesaid, to wit, at, &c.; and so the said Ann saith, that the said T. although often requested, hath not kept his said covenant so by him made with the said Ann as aforesaid, but hath broken the same, and to keep the same with the said Ann hath hitherto wholly refused, and still doth refuse, to the
damage

damage of the said Ann of fifty pounds, for which she brings her suit, &c.

ON CHARTER-PARTIES OF AFFREIGHTMENT.

LONDON, *ff.* William Webster complains of Jonathan Blagden, &c. of a plea of breach of covenant; for that whereas, by a certain deed of charter-party of affreightment made on, &c. to wit, at, &c. between the said William (by the name of William Webster, master of the good ship or vessel called the Rachael, of Witby, of the burthen of three hundred and sixty tons or thereabouts, now lying in the River Tyne), of the one part, and the said Jonathan (by the name of Jonathan Blagden, of Newcastle-upon-Tyne, and company, merchants, freighter of the said ship), of the other part (the counterpart of which said charter-party of affreightment, sealed with the seal of the said Jonathan, he the said William now brings here into court, the date whereof is the same day and year aforesaid), it is witnessed that the said William Webster had that day letten the said ship to freight for three voyages from Shields to London, and the freighter had hired the same in manner and form following, that is to say, that the said ship then was, and should during the said voyage, be at the expence of the said William Webster, or his assigns, kept staunch, tight and strong, well manned, victualled, tackled, and provided in every respect fit for merchant service, and particularly for performing such voyages (the dangers and perils of the seas, restraints of princes and rulers, fire, and enemies, during the same, always excepted); and also that the said William Webster, or his assigns, should forthwith receive and take in and on board the said ship in the River Tyne a full and complete loading of coals, from the order, and of the goods and adventure of the said freighter, or his assigns; and being so loaden the said William Webster with the ship and cargo should, with the first opportunity of wind and weather, proceed directly for London, and on her arrival there deliver the same to the order of the said freighter, at such convenient place and places where the said ship and cargo might safely come; and also that the said ship should, for her loading and delivery each voyage, lie the full space of twelve lawful working days, if required, and so to end the said intended voyage or voyages; in consideration of which the said freighter did thereby covenant and agree, not only to load and put on board the said ship the said cargo or cargoes as aforesaid, and to receive or cause the same to be received from on board her each voyage at London as aforesaid, and within the days and times limited for her loading and delivery each voyage as aforesaid, but also should and would pay or cause

Declaration for demurage at the unloading ports, in each of three different voyages.

to be paid unto the said William Webster, or his assigns, upon the safe delivery of each cargo as aforesaid, in full for freight and hire of the said ship for the said voyage or voyages, at and after the rate of seven shillings sterling a chaldron for every chaldron of coals (London measure) which should be taken in and on board the said ship and delivered during the said voyages as aforesaid, and all charges upon and for the said cargo or cargoes, except trimming, keelman's beer, pilotage, and delivery, together with the sum of two pounds ten shillings sterling *per* day to be paid day by day, as the same should grow due for every day of the said ship's detention over and above the days and times limited for her loading and delivery each voyage as aforesaid; and that the said William Webster should and would continue running as fast as wind and weather would permit until these voyages were made and completed upon the terms and conditions above expressed; and also should and would pay and discharge trimming, &c. and delivery during the said voyages, as by the said charter-party of affreightment (amongst other things), reference being thereto had will more fully and at large appear: And the said William Webster further says, that at the time of the making the said charter-party of affreightment, the said ship was, and during all the said three voyages in the said charter-party and hereafter mentioned, was kept at the expence of him the said William Webster staunch, tight and strong, and well manned, victualled, tackled, and provided in every respect fit for merchant service, and particularly for performing such voyages (the dangers and perils of the seas, restraints of princes and rulers, fire, and enemies, during the same, excepted); and that he the said William Webster did forthwith, to wit, on, &c. begin to receive and take in and on board the said ship, to wit, in the River Tyne, in the said charter-party mentioned, to wit, at, &c. a full complete loading of coals, from the order and of the goods and adventure of the said freighter, or his assigns, for the first voyage of the said three voyages; and that the said ship did for her loading for that voyage lie a long space of time, to wit, the space of seven lawful working days, to wit, in the River Tyne as aforesaid, being thereto required, and not sooner dispatched by the said freighter; and that during the space of seven days he the said William Webster did receive and take, and on the last day of the said days, to wit, on, &c. did finish and complete the receiving and taking in and on board the said ship in the River Tyne aforesaid, a full and complete loading, from the order and of the goods and adventure of the said freighter or his assigns; and the said ship being so laden, he the said William Webster with the said ship and cargo afterwards, with the first opportunity of wind and weather, to wit, on, &c. proceeded directly for London, and did run and continue running with the said ship as fast as wind and weather would permit, until the said voyage was made and compleated, and afterwards, to wit, on, &c. he the said William Webster, with the said ship and cargo, arrived in

safety at London aforesaid, to wit, in the river Thames there; and that he the said William Webster did, immediately after the arrival of the said ship and cargo there, to wit, on, &c. give notice of the arrival of the said ship and cargo there to the then factor and assigns of the said Jonathan Blagden, and to whom the said cargo of coals, so shipped by the said Jonathan Blagden as aforesaid, were by the said Jonathan Blagden ordered and consigned, and that the said ship did there, to wit, at, &c. to wit, in the said river of Thames there, the same being a convenient place there where the said ship and cargo might safely come for the delivery of the said cargo, to the order of the said freighter, did lye a long space of time, to wit, for the space of eleven working days, being thereto required, and not being sooner dispatched by the said Jonathan, his factor, or assigns, for, in, or about the unloading and delivery of the said cargo to the order of the said freighter, and that he the said William Webster did, during all that time safely deliver all the said cargo to the order of the said freighter there, to wit, at, &c. to wit, in the said river of Thames, the same being a convenient place where the said ship and cargo might safely come, and so end the said voyage, and did then and there, to wit, at, &c. on the last day of the said eleven days, to wit, on, &c. pay and discharge trimmings, &c. during that voyage: And the said William Webster further says, that the said Jonathan Blagden by himself, his agents, factors, or assigns, did, in that voyage, keep and detain the said ship on demurage, to wit, at, &c. and for a long space of time, to wit, for the space of five working days, in and about the loading, unloading and delivery of the said cargo of coals, over and above the said twelve lawful working days in the said charter-party for that purpose mentioned; yet the said J. B. did not, according to the tenor of the said charter-party aforesaid, and of his covenant by him in form aforesaid made, during the said five days of demurage, pay to the said W. W. the said sum of two pounds ten shillings sterling per day, day by day, during the said five days of demurage, or any part thereof, or at any other time hitherto, but he to pay the same to the said W. W. hath hitherto wholly refused and made default, contrary to the form and effect of the said charter-party, and of the said covenant of him the said J. B. made in that behalf as aforesaid; and the said W. W. further says, that the said ship so being kept at the expence of him the said W. W. staunch, &c. in every respect fit for merchant's service, particularly for performing such voyages as aforesaid; and the said first cargo being so delivered, and the said first voyage so made as aforesaid, he the said W. W. did forthwith after the delivery of the said cargo, and after ending the said first voyage, and with the first opportunity of wind and weather, to wit, on, &c. sail and proceed with the said ship from London aforesaid, to wit, out and from the said river of Thames, there directly to and towards Shields aforesaid, and afterwards, to wit,

3d Breach.

on, &c. be the said W. W. arrived in safety at Shields aforesaid, in the said river of Tyne there, and during all that time he the said W. W. did run, and continue running with the said ship so fast as wind and weather would permit; and that he the said W. W. did, immediately after the arrival of the said ship there, to wit, on, &c. give notice of the arrival of the said ship there to the said Jonathan Blagden; and the said W. W. further says, that after the said ship was so arrived at, &c. in the river Tyne there, to wit, on, &c. he the said W. W. did begin to receive and take in, and on board, &c. &c. (same as before, saying, the second of the said three voyages, instead of the first, &c. &c.): And the said W. W. further says, that the J. B. by himself, his agents, factors, or assigns did, in the said last-mentioned voyage, keep and detain the said ship on demorage, to wit, at, &c. a long space of time, to wit, for the space of twenty-five lawful working days, in and about the loading, unloading, and delivery of the said last-mentioned cargo of coals, over and above the said twelve lawful, &c. in the said charter-party for that purpose mentioned; yet the said J. B. did not, according to the said charter-party aforesaid, and of the covenant of him the said J. B. so made as aforesaid, during the said twenty-five days of demorage, pay to the said W. W. the said sum of two pounds ten shillings per day, &c. during the said twenty-five days of demorage, or any part thereof, but he to pay the same to the said W. W. hath, &c. contrary, &c. and of the aforesaid covenant of him said J. B. made in that behalf as aforesaid; and so the said W. W. says, that the said J. B. although often requested, hath not kept with him the said W. W. the covenant made by the said J. B. with him the said W. W. but hath broke the same, and to keep the same with him the said W. W. hath hitherto wholly refused, and still refuses to the said W. W. his damage of one hundred pounds; and therefore, &c. &c.

In the Common Pleas.

Covenant by
master of a ship
against the
freighters on a
charter party,
for not fully
loading her, and
not paying full
freightage, and
for primage, &c.

LONDON *ff.* Mark Gregory, late of London, merchant, and John Turnbull, late of the same place, merchant, were summoned to answer George Passmore of a plea that they keep with the said George the covenants made between the said Mark and John; and the said George, according to the form and effect of a certain charter party of affreightment made between them, &c.; and thereupon the said George, by Edward Woolstonecraft his attorney, says, that whereas, by a certain charter-party of affreightment made on the thirtieth day of September, in the year of Our Lord 1783, at London, to wit, in the parish of St. Mary-le-Bow, in the ward of Cheap, between the said George, by the name and addition of George Passmore, master and owner of the brigantine called the London, of the burthen of one hundred and

and fifty tons or thereabouts, and now in the river of Thames, of the one part, and the said Mark and John of the other part (one part of which said charter-party, sealed with the seal of the said Mark and John, the said George now brings here into court, the day whereof is the day and year aforesaid), it is witnessed that the said master and owner, for the consideration thereafter mentioned, did thereby covenant, promise, and agree to and with the said merchants, the executors, administrators, and assigns, that the said brigantine, London, being in a fit and proper condition for the voyage thereafter mentioned, should and would, as soon as convenient, proceed to Gibraltar, and when unloaded there proceed to Malaga and there value himself, or Messrs. Mettinez and Co. merchants of the said place, and being admitted to free pratique, should tarry, if required, forty-eight hours for orders to load there and at Valiz Malaga, on the terms thereafter mentioned, to say, for every ton of Malaga tonnage of ten chests of lemons (and other goods in proportion of London), three pounds ten shillings *per* ton, and after that rate for other goods in proportion, according to the custom at Malaga, provided the same brig London could be fully loaded at Malaga and Valiz Malaga aforesaid; and if it should so happen that the said ship could not be provided with full cargo at Malaga or Valiz Malaga, then and in such case the master agreed to proceed with the said ship to Alicant or Barcelona, and there receive orders from the said freighter's correspondents to load a full and complete cargo, at any two loading places within the district of Alicant or Barcelona, at and after the rate of forty shillings *per* ton of baulla or raisins in baskets or casks, always allowing twenty hundred weight of each to the ton at the king's beam, with the usual custom of tare and draft, and likewise fourteen bags of nuts to the ton, and two pipes of wine or brandy to the ton; and the aforesaid master agreed to deliver the said cargo, if required by the freighters or their correspondents, agents, factors, or assigns, in the island of Guernsey or the port of London, paying freight for the said goods to either of those places, at and after the rate of forty shillings *per* ton: but should the freighters or their correspondents order all or any part of the said cargo to be delivered at Falmouth or Plymouth, then, in such case, the freighters obliged themselves to pay freight for every ton of goods so delivered at Falmouth or Plymouth, forty-five shillings, with two-thirds pilotage, quarantine, and port charges, and the said charges to commence at Malaga, with five *per cent.* primage to the master, the freighters to be allowed forty days to load and unload, and ten days over and above, if required on demorage, at and after the rate of three pounds *per* day, day by day, as the same should grow due, as by the said charter-party more fully appears: And the said George in fact saith, that the said ship in the said charter-party mentioned, after the making the said charter-party, to wit, on the fifth day of October, in the year aforesaid, being in fit and proper condition

dition, departed and set sail from and out of the river of Thames upon the said intended voyage, and afterwards arrived at Gibraltar and unloaded there, and afterwards, to wit, on the twenty-ninth day of October, in the year aforesaid, arrived at Malaga in the said charter-party mentioned; and the said George afterwards, to wit, on the same day and year last aforesaid, gave notice thereof to the said Messrs. Mettinez and Co. in the said charter-party mentioned, and the said ship remained and continued there for orders to load, and was kept and detained there by the said assigns of the said Mark and John for a long time, to wit, for the space of fifty days, and afterwards, to wit, on the twenty-sixth day of January, in the year aforesaid, the said George did receive into and on board his said ship at Malago aforesaid, from the said Messrs. Mettinez and Co. divers goods and merchandizes, being all the goods and merchandizes which the said Messrs. Mettinez and Co. thought fit to put on board her, and afterwards, to wit, on the twenty-seventh day of January, in the year of Our Lord 1784, the said ship departed and set sail from Malaga aforesaid, with the said goods and merchandizes on board her as aforesaid, on her said voyage towards London aforesaid, and afterwards, to wit, on the fifth day of March, in the year last aforesaid, arrived at London aforesaid, whereof the said Mark and John afterwards, to wit, on the same day and year last aforesaid, there had notice; and the said ship did then and there end her said voyage, and the said Mark and John did not then and there immediately unload the said ship, but kept and detained the said ship for a long time, to wit, until the fifteenth day of September then next following, and there fully unloaded the same: And, although the said George hath always well and truly observed, performed, fulfilled, and kept all and singular the covenants, claims, and agreements in the said charter-party contained, on his part and behalf to be observed, performed, fulfilled, and kept; yet, protesting that the said Mark and John have not well and truly observed, performed, fulfilled and kept, any of the covenants, clauses, and agreements in the said charter-party contained, on their part and behalf to be performed and fulfilled: In fact the said George saith, that the said Mark and John, and their assigns, kept and detained the said ship on demurage ten days over and above the forty days in and by the said charter-party allowed for the loading and unloading the said ship, as by the said charter-party they lawfully might; by reason whereof the sum of thirty pounds became due and payable from the said Mark and John to the said George for the same: Yet the said Mark and John, although often requested, have not paid the said thirty pounds, or any part thereof, to the said George, but have hitherto altogether refused so to do, and still do refuse, contrary to the form and effect of the said charter-party, and of the said covenant of the said Mark and John so made in that behalf as aforesaid: And the said George further says, that although the said Messrs. Mettinez and Co. the assigns of the said

Mark

Mark and John, did put and load divers goods and merchandizes on board the said ship as aforesaid, to be brought from Malaga aforesaid, and although the said ship would have carried other and a great many more goods and merchandizes from Malaga aforesaid to London aforesaid, yet the said Mark and John and the said Messrs. Mettinez and Co. the assigns of the said Mark and John, although often requested so to do, did not fully and compleatly load the said ship, but wholly neglected and refused so to do, contrary to the form and effect of the said charter-party, and of the covenant of the said Mark and John so made in that behalf as aforesaid: And the said George further says, that the said primage on the said goods and merchandizes, so loaded on board the said ship as aforesaid, amounting to a large sum of money, to wit, to the sum of eighteen pounds fifteen shillings, and that two third parts of the pilotage and port charges of the said ship, during the said last-mentioned voyage, amounting to another large sum of money, to wit, the sum of forty pounds, of which said premises the said Mark and John afterwards, to wit, on the twentieth day of April, in the year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice: Yet the said Mark and John, although often requested, have not, nor hath either of them paid the said several sums of money so respectively due as last aforesaid, but have hitherto altogether refused so to do, and the same remains due and unpaid to the said George, contrary to the form and effect of the said charter-party, and of the said covenant of the said Mark and John so made in that behalf as aforesaid; and so the said George saith, that the said Mark and John have not kept with him the covenant made between them as aforesaid, but have broken the same, and to keep the same with the said George have hitherto altogether refused, and still do refuse, to the damage of the said George of one hundred pounds; and therefore he brings his suit, &c.

W. BALDWIN.

And the said Mark and John, by John Gill their attorney, come and defend the wrong and injury, when, &c. and say, that the said George ought not to have or maintain his aforesaid action against them; because they say that the said charter-party on the said deed mentioned, is not the deed of them the said Mark and John, and of this they put themselves upon the country, &c. And for further plea in this behalf, by leave of the court here for this purpose first had and obtained, according to the form of the statute in that case lately made and provided, the said Mark and John say, that the said George ought not to have or maintain his aforesaid action against them; because they say that the said brig, London, in the said charter-party and in the said declaration also mentioned, being in such fit and proper condition as in the said declaration is mentioned, did not, as soon as convenient, proceed to Gibraltar, and when unloaded there proceed to Malaga, according

Plea, 1st, general issue.

2d, That the ship was detained on her arrival at Malaga upon quarantine, and that goods could neither be loaded nor unloaded during that time.

COVENANT.—PLEA OF PERFORMANCE

According to the form and effect of the said charter-party, and of the said covenant of the said George therein in that behalf contained as aforesaid; but on the contrary thereof the said brig having been, before her said departure from the river of Thames in the said deed mentioned, loaden with and having received on board her divers large quantities of goods and merchandizes to be carried in the said brig to Gibraltar and Malaga aforesaid, for and upon account of other persons than the said Mark and John, without the consent of the said Mark and John, afterwards and after her arrival at Gibraltar aforesaid, to wit, on the thirtieth day of October, in the year last aforesaid, departed therefrom, the said goods and merchandizes so before then loaden and being on board the said brig, on such account as last aforesaid, still continuing on board the same, and with the same goods and merchandizes so then loaden and continuing on board the said brig as aforesaid, afterwards, to wit, on the same day and year last aforesaid, at Malaga aforesaid, arrived: And the said Mark and John in fact say, that by reason of the said goods and merchandizes so brought in the said brig as aforesaid, to Malaga aforesaid, the said brig was, immediately upon her arrival at Malaga aforesaid, necessarily there detained upon quarantine for the space of forty days, thereafter and during all that time the said goods and merchandizes, so then loaden and being on board the said brig as aforesaid, could not nor might be unloaden therefrom, nor could nor might any other goods and merchandizes, during all the said space of forty days next after the same arrival of the said brig at Malaga aforesaid, be loaden or put on board the said brig, for or on the account of the said Mark and John, or of any other person whatsoever, to wit, at London aforesaid, in the parish and ward aforesaid; and this the said Mark and John are ready to verify; wherefore they pray judgment if the said George ought to have or maintain his aforesaid action against them, &c. And the said Mark and John, for

-To the first breach, 3d, they did not keep the ship on demurrage.

To the second breach, 4th, that their assigns did fully load at Malaga.

further plea in this behalf, by leave of the court here for this purpose first had and obtained, according to the form of the statute in that case lately made and provided, as to the said breach of covenant firstly above assigned, say that the said George ought not to have or maintain his aforesaid action thereof against them; because they say that they the said Mark and John, or their assigns, did not ever keep or detain the said ship on demurrage in manner and form as the said George has in that breach by him firstly above assigned alledged, and of this the said Mark and John put themselves upon the country; and that the said Mark and John for further plea in this behalf, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in that case lately made and provided, as to the said breach of covenant secondly above assigned, say that the said George ought not to have or maintain his aforesaid action thereof against them; because they say that they and the said Messrs. Mettinez and Co. the assigns of the said Mark and John, did fully and completely load

load the said ship at Malaga aforesaid, according to the form and effect of the said charter-party, to wit, at London aforesaid, in the parish and ward aforesaid; and of this, &c. And the said Mark and John for further plea in this behalf, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in that case lately made and provided, as to the said breach of covenant secondly above assigned, say, that the said George ought not to have or maintain his aforesaid action thereof against them; because they say that true it is, that the said ship would have carried more goods and merchandizes from Malaga aforesaid to London aforesaid, than were put on board the said ship by the said Messrs. Mettinez and Co. the said assigns of the said Mark and John, but for plea in this behalf the said Mark and John say, that it did so happen that the said ship could not be provided with a full cargo at Malaga or Valiz Malaga, in the said charter-party mentioned, whereof the said George, after the loading on board the said ship at Malaga aforesaid, the said goods and merchandizes in the said deed mentioned to have been there loaden on board the same; to wit, on the twenty-seventh day of January, in the year of Our Lord 1784, at Malaga, to wit, at London aforesaid, in the parish and ward aforesaid, had notice from the said Messrs. Mettinez and Co. the said assigns of the said Mark and John there; and the said Messrs. Mettinez and Co. the assigns of the said Mark and John, there offered to the said George to provide his said ship with a full cargo, if he the said George would proceed with his said ship to Alicant or Barcelona, and there receive orders from the correspondents of the said Mark and John, for the loading a full and complete cargo, according to the form and effect of the said charter-party, to wit, at London aforesaid; but the said George then and there, and always afterwards, wholly refused so to do, and instead thereof, afterwards, to wit, on the same day and year last aforesaid, at Malaga, did complete the loading of the said ship with divers other goods and merchandizes by him taken on board there, upon freight for and upon the account of other persons than the said Mark and John, or their assigns, to wit, at London aforesaid, in the parish and ward aforesaid; and this the said Mark and John are ready to verify; wherefore they pray judgment if the said George ought to have or maintain his aforesaid action against them as to the said breach of covenant by him secondly above assigned, &c. And the said Mark and John for further plea in this behalf, by like leave, &c. as to the said breach of covenant lastly above assigned, say, that the said George ought not to have or maintain his aforesaid action thereof against them; because they say that no such sums of money as are in that breach mentioned, nor any of them, nor any part thereof, ever became due or payable from the said Mark and John to the said George, for or on account of the same primage, pilotage and port-charges in the said breach mentioned, or any of them, in manner and form as the said George has in that breach by him lastly

To the said second breach, 5th, that goods could not be procured completely to load her at Malaga, &c.; but they offered to load her completely if he would have proceeded to Barcelona, which he would not do, but made up the loading with other person's goods.

6th, To the last breach, that no such sum became due for primage, &c.

lastly above assigned alledged; and of this the said Mark and John put themselves upon the country, &c.

NASH GROSE.

Covenant on a charter-party of affreightment for the full freight, when the freighter would only pay a part.

LONDON, to wit. George Faith complains of William De Vie Tuper, being, &c. of a plea of breach of covenant: for that whereas, by a certain charter-party of affreightment made on the fifteenth day of June, in the year of Our Lord 1786, to wit, at London aforesaid, at the parish of St. Mary-le-Bow, in the ward of Cheap, between the said George Faith (by the name and addition of George Faith, master of the good brig Britannia, of the burthen of three hundred tons or thereabouts) of the one part, and the said William (by the name and addition of William De Vie Tuper, acting for and on behalf of Messrs. Refner and Tuper of Barcelona, in the kingdom of Spain), of the other part (one part of which said charter-party of affreightment, sealed with the seal of the said William De Vie Tuper, the said George now brings here into court, the date whereof is the day and year aforesaid): It is witnessed that the said George Faith, for the consideration thereafter mentioned, did thereby promise and agree to, and with the said William De Vie Tuper, his executors, administrators, and assigns, that the said brig or vessel was of the burthen aforesaid; and being tight, staunch, and strong, and every way properly fitted for the voyage thereafter mentioned, he the said George Faith had granted and let, and the said William De Vie Tuper had taken and hired the same on the terms and conditions following, that is to say, the said George Faith should be at the bay of Rosas, in the kingdom of Spain, on or before the middle of October then next ensuing, wind and weather permitting, and then consign himself and vessel unto the agent or correspondent of the said freighter, and there hold himself in order to take in ten tons, or as much more as the said brig could conveniently stow and take in, of cork, and when so loaded should proceed, wind and weather permitting, for the port of London, and there make a true delivery of his said cargo of cork; and the said master further agreed to allow the said freighter thirty running days for loading and unloading the said cargo of cork; in consideration whereof the said freighter did thereby, for himself, his executors, administrators, and assigns, agree to pay, or cause to be paid, on the true delivery of the said cargo of cork in London, six pounds sterling per ton (at the king's beam), with two-thirds of all pilotage, quarantine, and port charges, provided always it should and might be lawful to and for the said freighters, his executors, administrators, and assigns, to retain and keep the said vessel on demurrage at the bay of Rosas and London ten days if required, over and above the days limited, he or they paying, or cause to be paid unto the said master, three pounds per day, day by day, as the same should grow due, any thing therein contained to the

the contrary in anywise notwithstanding, as by the same charter-party of affreightment, relation being thereunto had, will (amongst other things) more fully and at large appear: And the said George in fact saith, that at the time of the making of the said charter-party of affreightment, the said brig or vessel therein mentioned was of the burthen aforesaid, and tight, staunch, and strong, and every way properly fitted for the voyage aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid: And the said George aforesaid in fact further saith, that the said brig or vessel being of such burthen, and so tight, staunch, strong, and fitted as aforesaid, he the said George was with the said brig or vessel aforesaid at the bay of Rosas, in the kingdom of Spain aforesaid, before the middle of October then next ensuing, to wit, on the twenty-first day of September in the year aforesaid; and that the said George did then and there consign himself and the said brig or vessel unto the agent or correspondent of the said freighter, and did there hold himself in order to take in ten tons, or as much more as the said brig could conveniently stow and take in of cork, divers, to wit, fifteen running days; and although the said brig or vessel could and might, during that time, there have conveniently stowed and taken in, and the said George was, during that time, there ready and willing to stow and take in, and would have stowed and taken in and on board of the said brig or vessel, divers, to wit, sixty-five tons of cork, whereof the agent or correspondent of the said William there had notice, and was there requested by the said George to load and put in and on board of the said brig or vessel as much cork as she could conveniently stow and take in, according to the form and effect of the said charter-party of affreightment; and although the agent or correspondent of the said William at the bay of Rosas aforesaid did, during that time, there load and put in and on board of the said brig or vessel, divers, to wit, thirty-five tons of cork, yet the said George in fact further saith, that the said William, his agent or correspondent, did not, nor would at any time within or during the time aforesaid, load or put in or on board of the said brig or vessel the remainder of the cork which she should and might so as aforesaid have conveniently stowed and taken in, or any part thereof; but during all the time aforesaid wholly neglected and refused so to do, contrary to the form and effect of the said charter-party of affreightment, and of the said covenant of the said William, by him in that behalf made as aforesaid; by reason whereof the said George, at the expiration of the said fifteen days, was forced and obliged to, and did set sail and proceed with the said brig or vessel from the bay of Rosas aforesaid, to the port of London aforesaid, without staying or taking in any more than the said thirty-five tons of cork; and that afterwards, to wit, on the fifth day of November in the year aforesaid, the said George did arrive with his said brig or vessel at the port of London aforesaid, and did there make a true delivery of the said cork so loaded and put
on

on board her as aforesaid, whereof the said William, after such delivery of the said last-mentioned cork, to wit, on the twentieth day of November in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice, and by reason thereof the said William then and there became liable to pay, and ought to have paid to the said George, the sum of three hundred and sixty pounds (the same being at and after the rate of six pounds sterling *per* ton for each and every of the said sixty-five tons of cork which the said George could and might, and would have stowed and taken in and on board the said brig or vessel, and part whereof was so loaded and put in and on board thereof as aforesaid, together with two-third parts of all pilotage, quarantine, and port-charges of the said brig or vessel during the said voyage; and although such pilotage, quarantine, and port-charges did amount to a large sum of money, to wit, the sum of twenty pounds of lawful money of Great Britain; whereof the said William afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; yet the said William (although often requested) had not paid to the said George the sum of three hundred and sixty pounds, together with the amount of the pilotage, quarantine, and port-charges aforesaid, or any part thereof, but hath hitherto wholly neglected and refused so to do, contrary to the form and effect of the said charter-party of affreightment, and of the said covenant of the said William by him in that behalf made as aforesaid; and so the said George in fact saith, that the said William (although often requested) hath not kept his said covenant so by him made with the said George in that behalf as aforesaid, but hath broken the same, and to keep the same with the said George hath hitherto wholly refused, and still refuses so to do, to the damage of the said George of five hundred pounds; and therefore he brings his suit, &c. Pledges, &c.

Drawn by MR. TIDD.

Declaration for demurage, at both loading and unloading ports, against the freighter.

LONDON, *J.* Richard Moorson complains of Anthony Brough, being, &c.: for that whereas by a certain charter-party of affreightment, indented and made on, &c. to wit, at, &c. by the said Richard (by the name and addition of Richard Moorson, of London, owner of the good ship or vessel called the Sally, of the burthen of four hundred and seventy tons or thereabouts, now in the river Thames, whereof John Akenhead is master), of one part, and the said Anthony (by the name and addition of Anthony Brough, of London, merchant), of the other part (one of which said charter-parties of affreightment, sealed with the seal of the said Anthony, the said Richard now brings here into court, the date whereof is the same day and year aforesaid): It was witnessed that the said owner, for the considerations thereafter mentioned, had granted and letten the said ship to freight unto the said

said Anthony, who had accordingly hired and taken the same for the voyage, and upon the terms and conditions following: whereupon first the said owner did thereby, for himself, his executors and administrators, covenant, promise, and agree, to and with the said freighter, his executors, administrators and assigns, that the said ship should, with all convenient speed, depart from and out of the river Thames, and directly, as wind and weather would permit, sail and proceed to Archangel, or so near thereunto as she could safely come; where being arrived, and being tight, staunch, strong, and well manned, provided, and furnished, fitting for the voyage thereafter mentioned, and ready to load goods, she should stay thirty running days, if required, to commence and be accounted from the day of the said master's giving notice to the correspondents of the said freighter at Archangel of the ship's arrival at that port, and of her being ready to load goods; during which time the said master should load, receive, and take on board the said ship, of and from the said freighter, his factors or assigns, one hundred and fifty-five tons of iron, eighty tons of tallow, fifty thousand matts, and five thousand standard deals, or other goods equal to the said quantity of deals, or as much of the goods before described as the said ship would reasonably stow and carry in her, besides her tackle, apparel, provisions, and furniture; and the said thirty days being expired, and the said ship there loaded and dispatched, she should directly, as wind and weather would permit, sail and proceed to the port of London, and there stay twenty running days, if required, during which time the said master should unload and deliver unto the said freighter, his factors or assigns, all the goods of him or them loaded on board the said ship at Archangel aforesaid, and so on such delivery to end her voyage, the perils and dangers of the seas, and restraints of princes and rulers during the said voyage, always excepted; and further, the said owner did agree, that the said ship should be addressed to the correspondents of the said freighter at Archangel, in consideration whereof the said freighter did thereby, for himself, his executors, administrators, and assigns, covenant, promise, and agree, to and with the said owner, his executors, administrators and assigns, that he the said freighter, his executors, administrators and assigns, should and would load and put on board the said ship at Archangel aforesaid, one hundred and fifty-five tons of iron, &c. or as much of all the said goods as the said ship could reasonably stow and carry as aforesaid, and at the port of London unload and discharge the same out of her the whole within the several days above limited for doing thereof, or days of demurage therein-after mentioned; and also well and truly pay, or cause to be paid unto the said owner, his executors, administrators and assigns, in full, for the freight and hire of the said ship for the voyage aforesaid, the full and just sum of six hundred pounds sterling, and pay the same in manner following, to wit, one half part thereof at and immediately on the unloading and delivery of the said goods at the port of London, and the remainder within three months

then next following, with average accustomed, and two-third parts of all port-charges and pilotage that should arise on the said ship at and from Archangel to the time she should be entirely unloaded of the said goods; and the said freighter did also agree, that after the several quantities of goods above-mentioned should be shipped and properly stowed on board the said ship, the said master might load and take on board her such goods as he should think proper, provided always, that it should and might be lawful to and for the said freighter, his factors, or assigns, to keep the said ship on demurage, at his loading and unloading ports, ten days at each place if required, over and besides the several days above limited for her stay at the same, he or they paying unto the said owner, or his assigns, the sum or value of three pounds ten shillings sterling *per* day, day by day, as the same should grow due, any thing aforesaid to the contrary notwithstanding, as in and by the said charter-party of affreightment (relation being thereunto had) will amongst other things more fully and at large appear: And the said Richard in fact saith, that the said ship did, with all convenient speed, next after the making of the said charter-party of affreightment, to wit, on, &c. depart from and out of the river Thames, and did directly, as wind and weather would permit, sail and proceed to Archangel in the said charter-party of affreightment mentioned, and that the said ship or vessel being there arrived, being tight, staunch, and strong, and well manned, provided, and furnished, fitting for the voyage in the said charter-party of affreightment mentioned, and ready to load goods; the said master did afterwards, to wit, on, &c. give notice to the correspondents of the said freighter at Archangel aforesaid (to whom the said ship was addressed), of the said ship's arrival at that port, and of her being ready to load goods in manner aforesaid: And the said Richard in fact further says, that the said ship being thereto required, did stay at Archangel aforesaid thirty running days, commencing and being accounted from the day of the said master's giving such notice as aforesaid (being the time above limited for her stay at the same); and also eight days over and besides the thirty running days (being so long kept on demurage there by the said Anthony, his factors or assigns, during which respective times the said master did load, receive, and take on board the said ship of and from the said Anthony, his factor or assigns, a certain cargo, consisting of one hundred and fifty-five tons, &c. and that, at the expiration of the respective times aforesaid, the said ship being there loaded and dispatched, did directly, as the wind and weather would permit, sail and proceed to the port of London, and there, to wit, at the port of London aforesaid (being thereto required), did stay twenty running days (being the time above limited for her stay at the same), and also six days over and besides the said twenty running days (being so long kept on demurage there by the said Anthony, his factors and assigns), during which said last-mentioned times, the said master unloaded and delivered unto the said Anthony, his factors or assigns, all the
goods

goods by him or them loaded on board the said ship at Archangel aforesaid, and so on such delivery ended her said voyage, to wit, at, &c.; and although the said Richard, from the time of the making of the said charter-party of affreightment, hitherto hath always well and truly observed, performed, and fulfilled, and kept all and singular the covenants, clauses, and agreements therein contained on his part and behalf to be observed, performed, fulfilled, and kept; yet, protesting that the said Anthony hath not well and truly observed, performed, and kept any thing in the same contained on his part and behalf to be observed, performed, fulfilled, and kept; in fact the said Richard saith, that the said Anthony did not, during the respective times the said ship was so kept on demurage as aforesaid, or either of them, pay unto the said Richard or his assigns the sum or value of three pounds ten shillings sterling *per* day, day by day, as the same did grow due, or any part thereof, nor hath he at any time since hitherto paid the same, or any part thereof to the said Richard, but hath hitherto wholly refused and neglected so to do, and therein wholly failed and made default, contrary to the form and effect of the said charter-party of affreightment, and of the said covenant of the said Anthony by him in that behalf made with the said Richard in manner and form aforesaid, to wit, at, &c.: and so the said Richard in fact says, that the said Anthony (although often requested, &c.) hath not kept his said covenant so by him made with the said Richard as aforesaid, but hath broken the same, and to keep the same with the said Richard hath hitherto wholly refused, and still refuses so to do, to the damage, &c. of eighty pounds; and therefore, &c.

Drawn by MR. TIDD.

LONDON, *ss.* Samuel Hartley, late of the city of London, Declaration a-
 merchant, was summoned to answer William Smith, of a plea, gainst the freight-
 that he keep with him the covenants made between the said ter, on a char-
 William and the said Samuel, according to the force, form, and ter party, from
 effect of a certain charter-party of affreightment thereof made be- London to the
 tween them, &c.: and thereupon the said William, by N. G. his West-Indies,
 attorney, complains, that whereas by a certain charter-party of and thence to
 affreightment, &c. &c. (set forth the charter-party), as by the Ostend; aver-
 said charter-party of affreightment, and the memorandum there- ring that plain-
 under written (reference being thereunto had) will more fully tiff, by order of
 and at large appear: And the said William in fact saith, that the the defendant's
 said ship was afloat before the said first day of December 1782, agent, at Guada-
 and that after the making of the said charter-party of affreight- loupe, took in a
 ment, he the said William did receive and take on board the said cargo of French
 ship (that is to say, in the port of London, certain lawful mer- troops for l'Ori-
 chandizes, being all such lawful merchandize as the said freighter ent, which he
 or his assigns did think fit to ship on board thereof), to be carried landed there for
 and conveyed in the said ship or vessel from the port of London the balance of
 aforesaid, directly to the sugar colonies in the West Indies, and freight, accord-
 that the said William afterwards, to wit, on, &c. (being thereto ing to a certain
 required times.

required by the said Samuel) did set sail and proceed in and with the said ship or vessel so loaden as aforesaid, from the port of London aforesaid, directly for the colonies aforesaid (that is to say, for Point Petre, in the island of Guadaloupe, in the West Indies aforesaid), at which place he the said William did arrive in and with the said ship or vessel on, &c. then next following, and that on her arrival there he the said William did immediately discharge the outward bound cargo thereof, and not being able to procure any other loading or cargo, did, by and with the order and direction, and at the special instance and request of William Barrow, the correspondent or agent of the said freighter in that behalf, take in a complete loading or homeward bound cargo, consisting of French troops, stores, and provisions, being such a loading or cargo as the said W. B. did think proper to ship on board thereof, to be transported, carried, and conveyed in the said ship or vessel from the island of Guadaloupe aforesaid, to a certain port on the continent of Europe (that is to say), to port l'Orient in the kingdom of France: and afterwards, to wit, on, &c. by and with the like order and direction, and at the special instance and request of the said W. B. did set sail, and proceed in and with the said ship or vessel so loaden as last aforesaid, from the island of Guadaloupe aforesaid, to port l'Orient aforesaid, at which last-mentioned port he the said William did arrive in and with the said ship or vessel on, &c. then next following, and there did deliver such homeward bound cargo, agreeable to the direction of the said W. B. there being no bills of lading thereof; and that afterwards, to wit, on, &c. he the said William having delivered the said homeward bound cargo, did set sail and proceed in and with the said ship or vessel from port l'Orient to the port of London aforesaid; and that the said ship or vessel did arrive at the said last-mentioned port on, &c. then next following, and afterwards, to wit, on, &c. there received her final discharge, and so ended her said voyage, to wit, at, &c.: And the said William in fact further saith, that the money due and payable to the said William for the freight and hire of the said ship or vessel according to the said charter-party, from the first day, &c. next after the making of the said charter-party, that is to say, from the first day, &c. until the said thirteenth day of, &c. being the day when the said ship or vessel was finally discharged at the port of London aforesaid, at and after the rate of eighteen shillings *per ton per month*, and in proportion for a lesser time than a month, amounted to a large sum of money, to wit, the sum of two thousand four hundred and eighty-five pounds of lawful, &c. and which said sum of two thousand four hundred and eighty-five pounds ought to have been paid to the said William at the periods and in the manner set down and described in the said charter-party of affreightment (that is to say), two months of the said freight in advance in one or more good bill or bills payable within two months next after the day of the commencement of the said freight; the second payment thereof up to the day of the said ship's arrival at her first loading port in the
West

West Indies, in like bill or bills of exchange in London, drawn immediately on her arrival at such loading port, payable at sixty days sight, and the remainder of the said freight in similar bill or bills, payable in sixty days next after the said ship's final discharge at the port of London, together with port charges, &c. whatsoever, from the day the said ship did break ground in the said port of London aforesaid, until her final discharge from the said port (and which said port charges, &c. amounted to a large sum of money, to wit, the sum of forty-six pounds of lawful, &c.) of all which said several premises the said Samuel, after the said ship or vessel was finally discharged, at, &c. to wit, on, &c. at, &c. had notice: And although he the said Samuel did pay two months of the said freight, amounting to the sum of four hundred and seventy-seven pounds in advance, according to the tenor and effect of the said charter-party of affreightment in that behalf, yet the residue of the said freight, together with the port charges, &c. amounting to the sum of two thousand and fifty four pounds, or either of them, or any part thereof, have not been paid to him the said William, but the same, and every part thereof are still due and owing, and in arrear to him the said William, to wit, at, &c. contrary to the form and effect, &c. (Conclude same as last precedent).

G. WOOD.

Plaintiff obtained a verdict for two thousand and forty-four pounds nineteen shillings and ninepence three farthings.

LONDON, *ff.* Patrick Stafford, late of, &c. mariner, was summoned to answer Robert Haden and David Richardson, assignees of the debts, goods, and effects which were of Thomas Seamark, a bankrupt, according to the form of the statutes made and now in force concerning bankrupts, of a plea, that he keep with the said Robert and David the covenants made between the said defendant, and the said T. S. and his assigns, according to the form and effect of a certain charter-party of affreightment made between them, &c.; and thereupon the said plaintiffs by C. D. their attorney, complains, that whereas by a certain charter-party of affreightment, made before the said T. S. became a bankrupt, to wit, on, &c. at, &c. between the said defendant, by the name and addition of Patrick Stafford, master of the good ship or brigantine called the Sally, burthen one hundred and twenty tons or thereabouts, now in the river Thames, of the one part, and the said T. S. by the name and addition of Mr. T. S. of London, merchant, of the other part (the counterpart of which said charter-party, sealed with the seal, &c.): It is witnessed, &c. (set forth the charter-party) as by the said charter-party more fully appears; and the said plaintiffs further say, that afterwards, to wit, on, &c. he the said T. S. did load the said brig, in the said river Thames, with a full and complete cargo of sundry goods and merchandizes of great value, to wit, of the value of five thousand

Declaration in covenant against the master at the suit of the assignees of the freighter, who had become bankrupt, for not carrying plaintiffs goods to Pensacola, according to the charter-party, but selling them at Jamaica, whereby plaintiff lost sundry profits, and was put to expence.

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pounds,

pounds, according to the form and effect of the said charter-party; and the said plaintiffs further say, that although the said brig did sail and proceed with the said cargo towards Pensacola, in North America; and although the said T. S. always well and truly observed, performed, and fulfilled and kept all and singular the covenants, clauses, and agreements in the said charter-party contained, on his part and behalf to be observed, performed, fulfilled, and kept: Yet protesting that the said defendants hath not well and truly observed, performed, fulfilled and kept any of the covenants, clauses, and agreements in the said charter-party contained, on his part and behalf to be observed, performed, fulfilled, and kept; in fact the said plaintiffs say, that although the said defendant ought to have proceeded, and was directed to proceed with the said cargo in the said brig, in his said voyage to Pensacola, in the said charter-party mentioned, according to the form and effect of the said charter-party, yet the said defendant wholly neglected and refused to proceed with the said brig and cargo on the said voyage to Pensacola, according to the form and effect of the said charter-party, and afterwards, and before the said T. S. became a bankrupt, to wit, on, &c. sold and disposed of the said cargo, being of great value, to wit, of the value of five thousand pounds, at Jamaica, in the West-Indies, by means of which said premises the said T. S. hath lost sundry great gains and profits which would have arisen and accrued to him from the said cargo, if the same had been sold at Pensacola aforesaid; and the said T. S. before he became bankrupt, by means of the premises was put to great expences, and was greatly injured and damaged, to wit, at, &c.; and so the said plaintiffs say, that the said defendant hath not kept with the said T. S. before he became bankrupt, or with the plaintiffs since he became a bankrupt, the covenants made between them the said defendant, and the said T. S. and his assigns, but hath broken the same, and to keep the same with the said plaintiffs still doth refuse; damage six thousand pounds, &c. &c.

W. BALDWIN,

Declaration.
Plaintiff was
possessed of a
ship, which he
let to hire to de-
fendant for a
certain sum of
money, and de-
fendant was to
pay all expences
that should ar-
ise, such as pi-
lotage, port-
charges, &c.

and if defendant kept the ship over the time agreed for, he was to allow plaintiff so much per month; the ship was detained three months longer than she was let for, which defendant not only refuses to allow for, but refuses to pay the expences that accrued for pilotage, &c.

MIDDLESEX, *ff.* The earl of H. was summoned, &c. Robert Dale, in a plea, that he keep with the said Robert the covenant made by him the said Earl with the said Robert, according to the form and effect of certain charter-parties of affreightment thereof made between the said Robert and the said Earl; and thereupon the said Robert, by S. T. his attorney, complains, that whereas by a certain charter-party of affreightment, indented, made, and concluded on, &c. to wit, at, &c. between the said Robert, by the name and description of Robert Dale, of the parish of, &c. owner of the good brigantine or vessel called, &c. British built, of the burthen of one hundred and twenty tons, or thereabouts,

then

then in the river Thames, of the one part, and the said Earl, by the name and description of the right honourable the earl of H. of the other part (one part of which said last-mentioned charter-party, sealed with the seal of the said Earl, the said Robert now brings into court, the date whereof is the same day and year aforesaid): It was witnessed (here copy the charter-party), as by the said charter-party, relation being thereto had, may (among other things) more fully and at large appear: X And the said Robert in fact saith, that at the time of making of the said charter-party, the said brigantine or vessel was tight, staunch, and strong, and completely fitted, equipped, and navigated as in the said charter-party is mentioned and provided for, and in that state and condition was had and used under the said charter-party, and for and during the space of six calendar months, for which the same was let to the said Earl as aforesaid, and that the said brigantine or vessel did, during that time, proceed on and perform a certain voyage, that is to say, a certain voyage from the port of L. to the port of L. in Jamaica, and in the course of that voyage did touch and stay at divers other ports and places, pursuant and according to the directions of the said Earl, the said freighter of the said brig or vessel, and of the master by him appointed under the said charter-party; and although he the said Robert well and truly observed, performed, fulfilled, and kept all and singular the covenants, clauses, and agreements in the said charter-party contained, on his part and behalf to be observed, performed, and fulfilled, and kept, to wit, at, &c.; yet protesting that the said Earl hath not observed, performed, fulfilled, and kept any thing in the said charter-party contained, on his part and behalf to be performed and fulfilled, the said Robert in fact saith, that although certain port charges and pilotage arose and accrued to the said vessel during her aforesaid employ under the said charter-party, and during the said space of six calendar months, for which the said vessel was so let as aforesaid, and in the said charter-party mentioned, whereof the said Earl had notice; yet the said Earl did not bear, pay, or defray, nor hath he as yet borne, paid, or defrayed such port charges and pilotage, or any part thereof, but omitted and neglected so to do, contrary to the tenor and effect of the said charter-party, and of the covenant of the said Earl in that behalf made as aforesaid, whereby he the said Robert was and hath been obliged to bear, pay, and defray the said port charges and pilotage, amounting in the whole to a large sum of money, to wit, the sum of forty pounds of lawful money of Great Britain, himself, and out of his own proper monies, to wit, at, &c.; and the said Robert in fact further saith, that the said charter party having been so made and entered into as aforesaid, certain alterations took place, and were made by him the said Robert in the said vessel, in the said charter-party mentioned, for accommodation, and otherwise at the request and by the directions of the said Earl, as such freighter of the said vessel as aforesaid, to wit, at, &c.; and that the charges of such alterations amounted in the whole to a large sum

of money, to wit, the sum of thirty pounds, of like lawful money of Great Britain, whereof the said Earl had notice, to wit, at, &c.; yet the said Earl hath not as yet paid or defrayed the said charges of the said alterations, or any part thereof, but he so to do hath hitherto wholly refused, and the same are still wholly due and owing from the said Earl unto him the said Robert, contrary to the tenor and effect of the said charter-party, and of the covenant of the said Earl in that behalf made as aforesaid, to wit, at, &c.; and the said Robert in fact further saith, that although the said Earl thought proper to detain and keep, and did accordingly detain and keep the said brig in the said charter-party mentioned, for the purposes in the said charter-party in that behalf mentioned, to wit, for the purposes of private accommodation, and of pleasure, for a long space of time, to wit, for the space of three months longer than the said six calendar months in the said charter-party mentioned, whereby he the said Earl became liable to pay to the said Robert, a large sum of money, to wit, the sum of one hundred and ten pounds of like lawful money, being at and after the rate of one hundred pounds of like lawful money of Great Britain, and so proportionably for a lesser time than a month for all such time as the said vessel was so detained over and above the said six calendar months as aforesaid, whereof the said Earl had notice, and was requested to pay such money unto him the said Robert, to wit, at, &c.; yet the said Earl hath not as yet paid to the said Robert the said sum of money so to him due and payable, for and in respect of the said brig being so detained by the said Earl for such time as aforesaid, over and above the said six calendar months in the said charter-party mentioned, or any part thereof, but he so to do hath hitherto wholly neglected and refused, and the said last-mentioned sum of money is still due and owing from the said Earl unto him the said Robert, contrary to the tenor and effect of the said charter-party, and of the covenant of the said Earl in that behalf made as aforesaid, to wit, at, &c.; and the said Robert in fact further saith, that although certain other port charges and pilotage accrued during such further time of employ of the said brig, whereof the said Earl had notice, to wit, at, &c.; yet the said Earl did not pay or defray, nor hath he as yet paid or defrayed the said last-mentioned port charges and pilotage, or any part thereof, but neglected and omitted so to do, contrary to the tenor and effect of the said charter-party, and of the covenant of the said Earl, in that behalf made as aforesaid, whereby he the said Robert was and hath been forced and obliged to pay and defray the said last-mentioned port charges and pilotage, amounting in the whole to a large sum of money, to wit, the sum of forty pounds of like lawful money, himself, and out of his own proper monies, to wit, at, &c. &c.: And whereas by a certain other charter-party, (go on as in the first Count till you come to this x mark, then proceed), and the said Robert avers, that at the time of the making of the said last-mentioned charter-party of affreightment, the said brigantine or vessel therein mentioned was tight, staunch, and strong, and was had and
used

used by the said Earl under the said last-mentioned charter-party, and for and during the said space of six calendar months, for which the same was so let as aforesaid, and was during all that time completely fitted, equipped, and navigated as in the said last-mentioned charter-party is stipulated and agreed upon; and although he the said Robert well and truly observed, performed, and fulfilled all and singular the covenants, clauses, and agreements in the said last-mentioned charter-party contained, on his part and behalf to be performed and fulfilled, to wit, at, &c.; yet protesting that the said Earl did not fulfil any thing in the said last-mentioned charter-party contained, on his part and behalf to be performed and fulfilled, the said Robert in fact saith, that the said brigantine in the said last-mentioned charter-party, her tackle, apparel, furniture, and appurtenances were not, nor were any or either of them, or any part thereof, at or before the expiration of the said six calendar months in the said last-mentioned charter-party specified, delivered up to him the said Robert, at the said port of London aforesaid, or elsewhere, in the like good order and condition the same was and were at the time of making the said last-mentioned charter-party, reasonable use, wear, and tear, and the damages and casualties of the seas, and all unavoidable accidents excepted, or in any other order and condition, but on the contrary, the said Robert in fact further saith, that the said last-mentioned brigantine, and her said tackle, apparel, furniture, and appurtenances were not delivered unto him the said Robert until and for a long space of time after the expiration of the said six calendar months in the said last-mentioned charter-party specified, to wit, for the space of six weeks, after the expiration of the said six calendar months, and were during all that time kept and detained and withheld from him the said Robert, by and through the neglect, omission, and default of the said Robert, and not by any dangers or casualties of the seas, or unavoidable accident, contrary to the tenor and effect, intent and meaning of the said last-mentioned charter-party, and of the covenant of the said Earl in that behalf made as aforesaid, to wit, at, &c. whereby he the said Robert, during all the time that the said last-mentioned brigantine or vessel was so kept and detained from him, over and above the said six calendar months for which the same was so let as aforesaid, lost, and was deprived of the use of the said last-mentioned brigantine or vessel, and of all profit, benefit, and advantage that would otherwise have arisen and accrued to him from the same, to wit, at, &c.; and so the said Robert saith that the said Earl, although often requested, hath not kept his said covenants so by him made with the said Robert as aforesaid, but hath broken the same, and to keep the same with the said Robert hath hitherto wholly refused, and still refuses, to the damage of the said Robert of two hundred pounds, and therefore he brings his suit.

V. LAWES.

MIDDLESEX,

Declaration in MIDDLESEX, to wit. Henry Fletcher, late of, &c. was
 covenant on a summoned to answer unto Thomas Freake, esquire, of a plea,
 charter-party that he keep with him the covenants made between the said de-
 for demurage at fendant, and the said plaintiff, according to the force, form, and
 the loading port, effect of a certain charter-party of affreightment thereof made be-
 and also for tween them, &c. ; and thereupon the said plaintiff, by A. B. his
 freight and pi- attorney, complains, that whereas by a certain deed, called a char-
 lotage, &c. ter-party of affreightment, indented and made on, &c. to wit,
 at, &c. between the said plaintiff, by the name of, &c. of the
 one part, and the said defendant, by the name, &c. &c. acting
 herein for and on the part and behalf of Messrs. Batson, Stephen-
 son, and company, of London, bankers, of the other part ; one
 part of which said charter-party of affreightment, sealed with, &c.
 the said plaintiff brings here into court, the date whereof is the
 same day and year aforesaid ; it was witnessed that the said plain-
 tiff, for the considerations therein mentioned, had granted and
 letten the said ship to freight unto the said defendant, who had ac-
 cordingly hired and taken the same for the voyage upon the terms
 and conditions following: whereupon first, the said owner did
 thereby for himself, his executors, and administrators, covenant,
 promise, and agree to and with the said freighter, his executors,
 administrators, and assigns, that the said ship should with all con-
 venient speed, &c. &c. (the ship was to go to Scilly, there to be
 loaded with deals, &c. and was to stay there fifteen days, at the
 expiration of which time she was to go to Liverpool, and stay
 there ten days in unloading her cargo, and the freighter was to pay
 after the rate of thirty-six shillings for every hundred of deals,
 and two thirds of port charges, and if they kept the ship over
 the days agreed on, they were to pay three pounds a day, &c.
 &c.) as by the said charter-party, relation being thereunto
 had will more fully appear; and the said plaintiff in fact saith,
 that the said ship did with all convenient speed next after the mak-
 ing of the said charter-party of affreightment, to wit, on, &c.
 depart from and out of the river of Thames, and did directly, as
 wind and weather permitted, sail, and proceed to St. Mary's, one
 of the Scilly islands, in the said charter-party of affreightment
 mentioned, and afterwards, to wit, on, &c. arrived at St. Mary's
 aforesaid ; and being there arrived, and being tight, staunch, and
 strong, and well manned, provided and furnished, and fitting for
 the said voyage in the said charter-party of affreightment men-
 tioned, and ready to load goods the ship did stay at St. Mary
 aforesaid fifteen running days, and was afterwards kept there by
 the said Messrs. Batson, Stephenson, and company, their factors
 or assigns, thirty days on demurage, over and besides the said fif-
 teen days, in the whole amounting to forty-five days, during
 which time the said plaintiff did load, receive, and take on board
 the said ship of and from the said Messrs. Batson, Stephenson, and
 company, their factors or assigns, divers, to wit, seventy-nine
 thousand two hundred and fifteen deals, of the several dimensions
 in the said charter-party of affreightment mentioned, being all such
 deals

deals as they thought fit to load and put on board her, not exceeding what she could reasonably stow and carry in her, over and besides her tackle, apparel, provisions and furniture; and the said plaintiff in fact further saith, that the said ship being so loaded and dispatched, did directly, as soon as wind and weather permitted, sail, and proceed to Liverpool aforesaid, or so near thereunto as she could safely come, and did there unload, and deliver unto the said Messrs. Batson and company, their factors or assigns, all the said goods by them loaden on board the said ship as aforesaid, and so on such delivery ended her said voyage, to wit, at, &c.: And the said plaintiff in fact further saith, that the freight of the said deals so loaded, received, and taken on board the said ship, and so unloaden and delivered as aforesaid, at and after the rate of thirty-six shillings sterling *per* hundred, for each and every hundred, and so in proportion for a less number than a hundred thereof, amounted to a large sum of money, to wit, the sum of, &c. of lawful, &c. and that two-third parts of all charges and pilotage that arose on the said ship, at and from London, to the time of her being unloaded as aforesaid, amounted to another large sum of money, to wit, the sum of, &c. of like lawful, &c. making together with the said sum of, &c. the further sum of, &c.; and although three months from the time of unloading of the said ship as aforesaid is long since elapsed, yet the said defendant, although often requested, hath not as yet paid the said sum of, &c. or any part thereof to the said plaintiff, but hath hitherto wholly neglected and refused so to do; and the same and every part thereof still remains and is due and owing from the said defendant to the said plaintiff, contrary to the form and effect of the said charter-party of affreightment, and of the covenant of the said defendant, by him in that behalf made with the said plaintiff in manner and form aforesaid, to wit, at, &c.; and the said plaintiff in fact further saith, that although the said Messrs. Batson, and company, their factors and assigns, did keep the said ship on demorage at St. Mary's aforesaid, thirty days over and besides the said fifteen running days, limited for her stay there in manner aforesaid, yet the said defendant, although often requested, did not, during the said thirty days, pay unto the said plaintiff or his assigns the sum or value of three pounds sterling *per* day, day by day, as the same did grow due, or any part thereof, nor hath he at any time since hitherto paid the same, or any part thereof, to said plaintiff, but hath hitherto wholly refused and neglected so to do, and therein wholly failed and made default, contrary to the form and effect of the said charter-party of affreightment, and of the said covenant of the said defendant, by him in that behalf made with the said plaintiff in manner and form aforesaid, to wit, at, &c.; and so the said plaintiff in fact saith, that the said defendant, although often requested so to do, &c. hath not kept his said covenants so by him made with the said plaintiff in manner and form aforesaid, but hath broken the same, and to keep the same with the said plaintiff hath hitherto wholly refused, and still refuses so to do, to the damage of said plaintiff of four hundred pounds; and therefore, &c.

And.

Plea to the last declaration; 1st, *non est factum*; 2d, that defendant hath paid the freight, &c.; 3d, that the defendant did not keep the ship on demurrage for thirty days, but only twelve days, for which he paid plaintiff.

And the said Henry, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said charter-party of affreightment in the said declaration mentioned, is not the deed of him the said defendant; and of this he puts himself upon the country, &c.: And for further plea in this behalf as to the said breach of covenant in the said declaration firstly above assigned, the said defendant, by leave, &c. according to the form of, &c. the said defendant says *actio non*; because he says, that the said defendant hath paid to the said plaintiff all such monies as were become due and payable from the said defendant to the said plaintiff for freight and for two-third parts of port charges and pilotage, that arose on the said ship at and from London to the time of her being unloaden, according to the form and effect of the said charter-party of affreightment, to wit, at, &c.; and of this he puts himself upon the country, &c.: And for further plea in this behalf as to the said breach of covenant in the said declaration lastly above assigned, the said defendant, by leave of, &c. as to so much thereof as relates to the keeping of the said ship in the said declaration mentioned on demurrage at St. Mary's aforesaid for eighteen days, parcel of the said thirty days in the said declaration mentioned, that the said plaintiff ought, &c. *actio non*; because he says that he the said defendant did not keep the said ship on demurrage at St. Mary's aforesaid, for the said eighteen days, parcel as aforesaid, or of any of them, or any part thereof, in manner and form as the said plaintiff hath above in his said declaration alledged; and of this the said defendant puts himself upon the country, &c.; and as to the keeping of the said ship in the said declaration mentioned on demurrage at St. Mary's aforesaid for twelve days, residue of the said thirty days, in the said declaration mentioned, the said defendant says, &c. *actio non*; because he says, that he the said defendant hath paid to the said plaintiff the sum of thirty-six pounds, being so much money as became due and payable to the said plaintiff for and on account of the keeping of the said ship on demurrage at St. Mary's, in the said declaration mentioned for those twelve days, according to the form and effect of the said charter-party of affreightment, to wit, at, &c.; and of this the said defendant puts himself upon the country, and so forth.

EDWARD LAW.

Declaration in covenant on a charter-party for demurrage, and for not completely loading the ship.

LONDON, *ss.* J. D. late of, &c. was summoned to answer Jurgen Osen, of a plea of breach of covenant; for that whereas by a certain charter-party of affreightment indented, and made on, &c. to wit, at, &c. in the parish of, &c. between the said Jurgen Osen (by the description of J. O. master of the good Russian ship Stadt Riga, of the burthen of four hundred tons measurement or thereabouts, and now lying at Plymouth, and bound on a voyage outward to the isle of Teneriffe, and from thence to the island of St. Thomas, in the West Indies), of the one part, and the said James Drummond (by the name of, &c. acting herein in the names

names and undertaking for William Herries, George Keith, and Co. of Ostend, merchants and burghers, subjects of his imperial majesty, of the other part (one part of which said charter-party of affreightment, sealed, &c. &c.), it was witnessed that the said Jurgen did grant and to freight let unto the said W. H. G. K. and Co. the said ship or vessel called, &c. for the voyage and upon the conditions thereafter mentioned; and the said Jurgen, for himself, his heirs, executors, and administrators, did thereby covenant, promise, and agree, to and with the said James, his executors, administrators, and assigns, that the said ship, having unloaded her outward bound cargo at the said island of St. Thomas, and being in a fit and proper condition for the voyage thereafter described, should directly sail for and proceed to, &c. &c. [the ship was to go to Dominica, and there take in a homeward bound cargo, and when loaded, return to Ostend, she was to stay at the places where she loaded ninety days, and at Ostend thirty. Copy the charter-party *verbatim*] as by the said charter-party of affreightment, relation being thereunto had will more fully appear: And the said Jurgen in fact says, that the said ship did, after having unloaded her outward bound cargo, and as soon after as she could be put in a fit and proper condition for the voyage in the said charter-party described, proceeded to the island of D. in the West Indies, and afterwards, to wit, on, &c. did arrive at the port of R. in the said island of D.; and that afterwards, to wit, on, &c. he the said J. O. gave notice of the arrival of the said ship at the said port of R. in the said island of D. to one D. F. he the said D. F. being an agent for the said freighters in the said island of D. and that the said D. F. so being such agent as aforesaid, did, according to the covenant in the said charter-party in that behalf, to wit, on, &c. declare that the said ship was to load at D. aforesaid, that is to say, at London aforesaid, in the parish of, &c.: And the said J. O. in fact further says, that the said ship did lie at the said port of R. in the island of D. aforesaid, for the space of ninety running days, and also for ten days and upwards after the expiration of the said ninety running days next after the arrival of the said ship at D. aforesaid, to wit, until and upon the nineteenth day of, &c. to receive a cargo; and that the said J. O. was during all that time ready and willing, and the said D. F. the agent of the freighters, well knew that the said J. O. was during all that time ready and willing to load, take, and receive on board the said ship from the said freighters or their assigns a full and complete homeward bound cargo of sugar, cotton, &c. &c. as the said ship could reasonably stow and carry in her; and that the said J. O. was during all that time ready and willing with the said ship, her boats and crew, to give proper and customary assistance in the loading of the said ship, to wit, at, &c.: But the said J. O. in fact further says, that the said freighters did not, neither did the said D. F. as agent to the said freighters, or any other agent, correspondent, or assigns of the said freighters, within the said ninety running days, or days of demorage, in the said charter-party

party mentioned, at the said port of R. in the said island of D. load or send along-side of the said ship a full and complete homeward bound cargo of sugar, &c. &c. as in the said charter-party mentioned, or any cargo whatsoever, but neglected and refused so to do, contrary to the covenant of the said James in the said charter-party mentioned, that is to say, at, &c. : And the said J. O. in fact further says, that although the said D. F. as agent to the freighters aforesaid, kept the said ship at the port of R. in the island of D. aforesaid, on demurage, for the space of ten days after the expiration of the said ninety running days, as in the said charter-party mentioned: Yet neither the freighters' agents, correspondents, or assigns, have yet paid to him the said J. O. the sum of sixty pounds, according to the time in the said charter-party mentioned, or any part thereof, but that the said sum of sixty pounds for demurage as aforesaid, still remains due and unpaid to him the said J. O. contrary to the covenant of him the said J. O. in that behalf made as aforesaid, to wit, at, &c. ; and so the said J. O. says, that he the said James hath not kept with him the covenant so made between them as aforesaid, but hath broken the same, and to keep the same with the said J. O. the said James hath hitherto wholly refused, and still doth refuse, to the damage of the said J. O. of ten thousand pounds; and therefore he brings suit, &c.

Plea to the last declaration; 1st, *non est factum*; 2d, that the ship did not unload her outward bound cargo according to the form of the charter-party; 3d, that the ship did not, after she was so unloaded, proceed with all convenient speed to her loading port; 4th, that the plaintiff did not give notice of the arrival of the ship to the agent of defendant; 5th, that the ship unloaded her cargo at a different port, and was detained by the order of the plaintiff, whereby the defendant was prevented from getting a full cargo; 6th, that the ship did not with all convenient speed sail from England for the port of A. B. and that after she sailed she arrived at the port of D. where the plaintiff kept her a much longer time than was necessary for the putting her in proper condition for completing her voyage; and that after she was so completed she sailed to another port than mentioned in the charter-party, whereby the defendants were prevented from procuring any homeward cargo; 7th, that defendant's agent did not keep the ship on demurage.

And the said James, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays leave to imparle to the said declaration, and it is granted to him, &c. ; and thereupon a day is given to the parties aforesaid to come before our lord the king in eight days of St. Hilary, whensoever our said lord the king shall then be in England, at which day, before our lord the king at Westminster, comes the parties aforesaid, by their attorneys aforesaid, and the said James defends the wrong and injury, when, &c. and says, that the said charter-party of affreightment in the said declaration mentioned, is not his deed; and of this the said J. puts himself upon the country, &c. : And the said James, for further plea in this behalf, by leave, &c. according, &c. says *adlio non*; because he says that the said ship, in the said charter-party mentioned, did not unload her outward bound cargo at the said island of T. before she proceeded to the island of D. according to the form and effect of the said charter-party; and this, &c. ; wherefore, &c. if, &c. : And the said James, for further plea in this behalf, by like leave, &c. says, that the said Jurgen *adlio non*; because he says that the said ship did not, after having unloaded her outward bound cargo, and as soon after as she could be put in

a fit and proper condition for her voyage in the said charter-party described, proceed to the said island of D. in manner and form as the said Jurgen hath in his said declaration in that behalf above alledged; and of this the said James puts, &c.: And the said James, for further plea in this behalf, by leave, &c. says, *actio non*; because, protesting that the said Jurgen did not give notice of the arrival of the said ship at the said port of R. in the said island to the said D. F. in manner and form as the said J. O. hath in his said declaration above alledged in that behalf, protesting also that the said D. F. was not an agent to the said freighters at the said island of D. in manner and form as the said J. O. hath in his said declaration above alledged; for plea nevertheless in this behalf, the said J. D. says, that the said David Frager did not as agent to the said freighters there declare that the said ship was to load at Dominica aforesaid, in manner and form as the said J. O. hath in his said declaration in that behalf above alledged; and of this he the said James Drummond puts himself upon the country: And for further plea in this behalf, by leave, &c. says, that the said J. O. *actio non*; because he says that the said ship did not unload her outward bound cargo at the said island of St. Thomas, according to the covenant of the said J. O. in that behalf made in the said charter-party, but that on the contrary thereof the said ship, by the orders of the said J. O. failed to and unloaded her outward bound cargo at the island of St. Lucia, in the West Indies, and that J. O. wilfully, and without any reasonable and probable cause, kept and detained the said ship at the island of St. Lucia, for the space of five months and upwards after her arrival there, and for much longer time than was necessary for the purpose of unloading her outward bound cargo, and putting the said ship in a fit and proper condition for her voyage for Dominica, as described in the charter-party, before he proceeded with the said ship to the said island of Dominica, by reason of which said unnecessary delay of the said ship, at the said island of St. Lucia, and for no other cause whatsoever, the said freighters, their agents, correspondents, and assigns were wholly disabled, and prevented from proceeding or loading, or sending along-side the said ship any homeward bound cargo of sugars, coffee, cotton, or other produce, according to the said charter-party, and this, &c.; wherefore, &c. if, &c.: And the said J. D. for further plea in this behalf, by leave, &c. says, that the said Jurgen *actio non*; because he says that the said ship in the said charter-party mentioned, to wit, on the said twelfth day of April, in the year of Our Lord 1782, was lying and being in the port of Plymouth, in the county of Devon; and that the said ship, being in all things fully and completely trimmed, rigged, fitted out, victualled, and manned for the said outward voyage in the said charter-party mentioned, did not set sail and depart from the port of Plymouth aforesaid, within a reasonable time from the time of the making the said charter-party, but on the contrary thereof the said Jurgen wilfully and without any reasonable or probable cause, kept and detained the

the said ship at Plymouth from the time of the making of the said charter-party, until and upon the ninth day of May then next ensuing : And the said J. D. further says, that the said ship, being so as aforesaid in all things fully and completely trimmed, rigged, fitted out, victualled, and manned for the said voyage, afterwards, to wit, on the said ninth day of May, in the year of Our Lord 1782, departed and set sail from the port of Plymouth aforesaid upon her said voyage in the said charter-party mentioned, and afterwards, to wit, on the fifteenth day of June, in the year of Our Lord 1782, arrived at the said island of Teneriffe : And the said J. D. further says, that the said ship, after her arrival at the island of Teneriffe, being in all things fully and completely trimmed, rigged, fitted out, victualled, and manned for the completion of the said outward voyage in the said charter-party mentioned, did not set sail and depart from the said island of T. aforesaid within a reasonable time, from the time of the arrival of the said ship at the island of T. aforesaid ; but on the contrary thereof the said J. wilfully, and without any reasonable or probable cause, kept, and detained the said ship at the said island of T. from the time of the arrival of the said ship at the said island of T. until and upon the tenth day of, &c. then next ensuing : And the said J. D. further says, that the said ship, so being in all things fully and completely trimmed, &c. for the said voyage, afterwards, to wit, on, &c. departed and set sail from the said island of T. for and towards the island of St. Lucia, in the West Indies, and afterwards, to wit, on, &c. arrived at the said island of St. L. in the West Indies, and there unloaded her outward bound cargo, and did not arrive at or unload her outward bound cargo at the said island of St. Thomas, in the said charter-party mentioned : And the said J. D. further says, that the said J. O. wilfully, and without any reasonable or probable cause whatsoever, kept and detained the said ship at the island of St. L. aforesaid, for the space of five months and upwards, that is to say, until and upon the seventeenth day of, &c. after her arrival there, and for a much longer time than was necessary for the purpose of unloading her outward bound cargo, and putting the said ship in a fit and proper condition for sailing for and towards the islands of D. or St. L. or any or either of them, in the said charter-party mentioned, before he set sail and proceeded with the said ship to the said island of D. as in the said declaration mentioned ; by reason of all which wilful and unnecessary delays and detentions of the said ship by the said J. O. and for no other cause whatsoever, the said freighters or their agents, correspondents, and assigns at either or any of the said islands of, &c. were wholly disabled and prevented from procuring, or loading, or sending alongside of the said ship any homeward bound cargo of sugar, &c. according to the said charter-party ; and this, &c. ; wherefore, &c. if, &c. : And the said J. D. for further plea in this behalf as to the second breach of covenant above assigned, by leave, &c. says, *assio non* ; because he says that the said D. F. did not, as agent to the said freighters, keep the said ship at port R. in the said island

of

of D. on demurage for the space of ten days, or any part thereof, after the expiration of the said ninety running days, in manner and form as the said J. O. hath above in his said declaration in that behalf alledged; and of this he the said J. D. puts himself upon the country, &c.

GEORGE WOOD.

And the said Jurgen prays a day to imparl to the said plea, and it is granted to him, &c.; and thereupon a day is given to the parties aforesaid to come before our lord the king in fifteen days from the day of Easter, wheresoever our said lord the king shall then be in England, &c. that is to say, for the said Jurgen to imparl to the said plea, and then to reply to the same, &c. at which day, before our lord the king at Westminster, come the parties aforesaid, by their attornies aforesaid; and the said Jurgen prays a further day to imparl to the said plea, and it is granted him, &c.; and thereupon a further day is given to the parties aforesaid to come before our lord the king on the morrow of the Holy Trinity, wheresoever our said lord the king shall then be in England, that is to say for the said Jurgen to imparl to the said plea, and then to reply to the same, &c.; at which day, before our lord the king at Westminster, come the parties aforesaid by their attornies aforesaid, and the said Jurgen prays a further day to imparl to the said plea, and it is granted to him, &c.; and thereupon a further day is given to the parties aforesaid to come before our lord the king on the morrow of All Souls, wheresoever our said lord the king shall then be in England, that is to say, for the said Jurgen to imparl to the said plea, and then to reply to the same, &c.; at which day, before our lord the king at Westminster, come the parties aforesaid, by their attornies aforesaid, and the said Jurgen prays a further day to imparl to the said plea, and it is granted him, &c.; and thereupon a further day is given to the parties aforesaid to come before our lord the king in eight days of St. Hilary, wheresoever our said lord the king shall then be in England, that is to say, for the said Jurgen to imparl to the said plea, and then to reply to the same, &c.; at which day, before our lord the king at Westminster, come the parties aforesaid, by their attornies aforesaid, and the said Jurgen, as to the said plea of the said James by him first above pleaded in bar, and whereof the said James hath put himself upon the country, doth the like, &c.: And the said Jurgen, as to the said plea of the said James by him secondly above pleaded in bar, says, that he by reason of any thing in that plea contained, ought not to be barred

Imparlancessand
cont.nuances
from term to
term.

Replication to
the last plea,
that the ship did
unload at the

port mentioned in the charter-party; 2d, that plaintiff did not keep the ship at her unloading port a longer time than was necessary; 3d, that the defendants were not prevented, from such supposed delays of plaintiff's from procuring a cargo.

from having and maintaining his aforesaid action thereof against him the said James; because he says that true it is that the said ship in the said charter-party mentioned did not unload her outward bound cargo at the said island of St. Thomas, as the said James has in that plea alledged, but for replication in this behalf the said Jurgén says, that before and at the time of the making of the said charter-party in the said declaration mentioned, and afterwards, it was intended by the said Jurgén that the said ship should unload her said outward bound cargo at the said island of St. Lucia in the said declaration mentioned, if she should be able to go into the same, and not at the said island of St. Thomas, unless the said ship should by any accident be prevented from going into the said island of St. Lucia, to wit, at London aforesaid, in the parish and ward aforesaid; whereof the said James, before and at the time of the making of the said charter-party, to wit, on the twelfth day of April, A. D. 1782, at London aforesaid, in the parish and ward aforesaid, had notice: And the said Jurgén in fact further says, that the said ship, not being prevented by any accident from going into the said island of St. L. did afterwards, to wit, on, &c. there arrive, and afterwards, to wit, on, &c. did there unload her said outward bound cargo, to wit, at the said island of St. L. before she proceeded to the said island of D. to wit, at London aforesaid, in the parish, &c.; and this, &c.; wherefore, &c. and his damages, on occasion of the said breaches of covenant in the said declaration above assigned to be adjudged to him, &c.: And the said J. as to the said plea of the said James by him thirdly above pleaded in bar, and whereof the said James hath above put himself upon the country, does so likewise: And the said J. O. as to the said plea of the said James by him fourthly above pleaded in bar, whereof the said James hath above put himself upon the country, he the said J. O. doth so likewise, &c.: And the said J. O. as to the said plea of the said James by him fifthly above pleaded in bar, says, *precludi non*; because, protesting that the said plea and the matters therein contained, are not sufficient in law to bar him the said J. O. from having and maintaining his said action thereof against the said James, to which said plea in manner and form as the same is above made, the said J. O. is under no necessity, nor is he bound by the law of the land to answer; for replication, nevertheless, in this behalf, the said J. O. says, that he did not wilfully keep and detain the said ship at the said island of St. L. after her arrival there for much longer time than was necessary for the purpose of unloading her outward bound cargo, and putting the said ship in a fit and proper condition for her voyage for Dominica, as described in the said charter-party, before he proceeded with the said ship to the island of D. in manner and form as the said James hath in that plea above alledged; and this he the said J. O. prays may be enquired of by the country, &c.: And the said J. O. as to the said plea of the said James by him sixthly above pleaded in bar, says, *precludi non*; because, protesting as to the sufficiency of it; for replication, nevertheless, in this behalf the said J. O. says, that the said freighters, or their agents,

agents, correspondents, or assigns, at either or any of the said islands of D. &c. &c. were not, by reason of any such supposed wilful and unnecessary delays and detentions of the said ship in the said plea mentioned, and for no other cause whatsoever; wholly disabled and prevented from procuring, or loading, or sending alongside of the said ship, any homeward bound cargo of sugar, &c. according to the charter-party, in said manner and form as the said James hath in his said plea by him sixthly above pleaded in bar in that behalf alledged; and this the said J. O. prays, &c. : And the said J. O. as to the said plea of the said James by him seventhly above pleaded in bar, and whereof the said James hath put himself upon the country, does so likewise, &c.

EDWARD LAW.

And the said James, as to the said plea of the said J. O. by him Demurret; above pleaded by way of reply to the said plea of the said James, by him secondly above pleaded in bar, says, that the said replication and the matters therein contained are insufficient in law for the said J. O. to have his aforesaid action thereof maintained against him the said James, to which said replication, in manner and form aforesaid made and pleaded, he the said James hath no need, nor is he bound by the law of the land to answer in that respect; and this, &c. and prove as the court here shall direct; wherefore, for want of a sufficient replication in this behalf the said James prays judgment, and that the said J. O. may be barred from having and maintaining his aforesaid action thereof against him the said James: And as to the said plea of the said J. O. by him pleaded by way of reply to the said plea of the said James by him pleaded in bar, and whereof the said J. O. hath above prayed it may be enquired of by the country, he the said James doth so likewise: And as to the said plea of the said J. O. by him above pleaded by way of reply to the said plea of the said James by him sixthly above pleaded in bar, and whereof the said J. O. hath above prayed may be enquired, &c. &c.

GEORGE WOOD.

And the said J. O. for that he hath in his said plea by him Joinder; above pleaded by way of reply to the said plea of the said James by him secondly above pleaded in bar, alledged sufficient matter in law for him the said J. O. to have and maintain his aforesaid action against him the said James, which he the said J. O. is ready to verify and prove as the court, &c. and which said matter the said James hath not denied, nor in any wise answered thereto, but wholly refuses to admit the verification thereof, the said J. O. as before prays judgment and his damages, on occasion of the said breaches of covenant in the said declaration above assigned to be adjudged to him, &c.

EDWARD LAW.

Plaintiff obtained a verdict for 3,350l.

By the East India Company on a charter party.

LONDON, to wit. The united company of merchants of England, trading to the East Indies, complain of F. G. of L. mariner, being, &c. of a plea of covenant broken: for that whereas, by a certain charter indented of affreightment made the twenty-first of October 1736, at L. afore said, in the parish, &c. between R. N. esquire, and S. W. merchant, by the names of, &c. part owners of the good ship called the *Suffex*, of London, which the said part owners affirmed to be of the burthen of four hundred and ninety tons or upwards, then riding at anchor in the river of Thames; and the said F. G. by the name of, &c. of the other part (one part of which said charter-party, indented and sealed with the seals of the said R. S. and F. the said united company brings here into court, the date whereof is the same day and year): It is witnessed that the said part owners, for themselves and the rest of the owners of the said ship, and the said master, for himself, his executors, and administrators, granted and let to freight all the said ship unto the said united company, and the said united company hired and took to freight all the said ship for a voyage to be made by God's blessing as hereafter mentioned in trade, and also in warfare, as the said company, or any of their governors, presidents, or agents, authorized thereunto by the Court of Directors for the time being of the said company, or any other committee thereof should require or direct; whereupon the said part owners, for themselves jointly and severally, and for the rest of the part owners of the said ship, and for their respective heirs, executors, and administrators, did, in and by the said charter-party indented, in consideration of the sum of one thousand two hundred and twenty-five pounds, of, &c. by the said united company, to be imprest or paid to them at the ship's arrival at Gravesend outwards, in part of the freight and demurage, to grow due in respect of the said intended voyage, and of the further sum of three thousand six hundred and fifteen pounds, to be there likewise paid by the said company to the said master, in full satisfaction of and for all primage, average, which might otherwise become due and payable to the said mariners, or for or on account of the said ship's intended voyage, and for and in consideration of the concessions and covenants thereafter, on the part and behalf of the said company contained, and every of them covenant, grant, and agree, to and with the said united company of merchants trading to the East Indies, their successors and assigns, by the said charter-party intended, that the said mariners and master for the time being, together with the ships' officers and ship's company, should, in and during the said intended voyage with the said ship at sea, and with the said ship, her skiff and boat in port, together with such part of the said ship's company as should be necessary, not exceeding at any one time thirty men, unto, from, and upon the land, in as defensive and offensive manner in trade, and also in warfare, if so required, as afore said, and otherwise, at all times as occasion should require, be ready to serve, and should accordingly,

ingly, honestly, faithfully, and manfully serve the said company, their factors, and assigns; and the said part owner and master did as afore said jointly and severally covenant and agree, to and with the said united company, that the said master and the *mariners* of the said ship for the time being, during the whole intended voyage, should observe such commands, orders, directions, and instructions, as should from time to time be given by the said united company, or their court of directors for the time being, or by a committee to be appointed by them or by their governors, presidents, agents, chief factors, or assigns; and it was by the said charter-party indented further agreed, that the said ship, after her departure from the Downs, should (wind and weather permitting, and the restraint in the said charter-party excepted) directly sail to such ports and places in the East Indies, or other the limits of the said company, or elsewhere, as the said company or their court of directors for the time being, or a committee appointed by the said court for that purpose, or the major part of them, should direct in writing, and should there, according to such directions, fully, duly, and safely discharge and deliver in manner accustomed all such bullion, goods, merchandizes, and passengers, as should be laden or put on board the said ship, and should also receive and take on board the said ship, and well and securely stow and place therein all such other goods, bullion, merchandizes, and passengers, as should be laden or put on board, or tendered to be laden or put on board for or on account of the said united company, or by their order, or by the order of any of their presidents, agents, chief, and councils, or others their servants, and afterwards should sail therewith directly to such other ports, rivers, and places, to which the said ship should be appointed by the said united company, presidents, factors, or agents, and should, at all or any of those other ports or place whereunto she should be so ordered, not only duly and in safety discharge and deliver in manner accustomed, all such bullion, goods, merchandizes, and passengers, as the said united company, their presidents, factors, or agents, should lade or put on board, or tender to be laden or put on board her for England or elsewhere, leaving so much room as that therein she might over and above the same reasonably stow and carry her victuals, naval and other stores, tackles, and apparel, and to the performance of all and singular the covenants, grants, articles, payments, and agreements therein written, and in the indorsements which as well on the part and behalf of the said part owners and masters, their executors and administrators respectively, well and truly to be holden, paid, kept, and performed in all things as therein the said part owners and masters did bind themselves jointly and severally their joint and several heirs, executors, and administrators, and the ship afore said, with the freight, tackle, boats, and apparel of the same, unto the said united company and their successors and assigns; nevertheless and provided, that the said company should not have, exact, or receive from the said part owners by or from all or any of the penalties in

Second master.

the said charter-party mentioned, any sum or sums of money exceeding the value of the said ship and approven her freight, demurrage, and earnings, and the master's private trade; and the said united company did also bind themselves, and their successors and assigns, to the said part owners and master, their executors and administrators, as by the said charter-party indented it doth and may appear: And the said united company in fact say, that the said ship, at the said time of making the said charter-party aforesaid, was strong and staunch, and well and sufficiently fitted with boats, masts, sails, yards, cables, ropes, cords, artillery, and other furniture and apparel, and full necessary for such a ship and for such a voyage, according to the form and effect of the charter-party aforesaid: And the said united company further say, that before the said F. G. set out on the said intended voyage, the court of directors of the said united company did direct in writing the said F. G. to set sail and proceed, as wind and weather would permit, to the port of Canton in China, whereto he the said H. G. was consigned, and on his arrival there to deliver to Messrs. &c. whom the said Court of Directors had appointed to be supercargoes for managing the affairs of the said united company in China, or to such of them as should be there present, all the treasure, goods, and effects on board the said ship, consigned to them by invoice and bill of lading, and the said F. G. was to receive all such goods in return of the said cargo of the said united company, as they should order on board, and sign bills of lading for the same, and the said F. G. was to follow all other the orders agreeable to the said charter-party, and when the said F. G. was dispatched by the said supercargoes, he was to make the best of his way in return to England, according to the instructions which the said supercargoes should give him: And the said united company further say, that the said F. G. before he set out on his said intended voyage, was ordered and instructed in writing by the said Court of Directors of the said united company, then in case he should fall in company with any of the outward-bound shipping of the said united company, that he should not separate on any pretence whatsoever, but keep company so far as their way lay together, except a plain unavoidable necessity, or if homeward bound he should separate with any ship that should be dispatched with him, or that he should fall in company with, until he should get to the westward of the Cape of Good Hope, or if in case of any assault by an enemy outward or homeward, he should not stand by, and to the utmost assist one another in defence of themselves, and of the company's estate on board such concerting ships, the said Court of Directors of the said united company should deem them unworthy and incapable of serving the company any longer; and the said Court of Directors of the said united company in the said instructions took notice that they put the same clause into all their captains' instructions: And the said united company further say, that the said F. G. did, in pursuance of the said charter-party of freightment in the said ship *Suffex*, set
sail

fail for, and afterwards did arrive at Canton in China, that is to say, on the thirty-first of July 1737: And the said united company further say, that the said J. E. on fifteenth of November in 1737, departed this life at Canton aforesaid, and that the said R. A. &c. the surviving supercargoes and agents of the said united company afterwards, that is to say, on the fourth of January 1737, did dispatch the said F. G. and the said ship, and then and there gave him instructions in writing to proceed with the said ship the *Suffex* to the said united company's island of St. Helena, and from thence to the port of London, taking for the security of both ships to keep company with the *Winchester* (a ship then belonging to the said united company): and the said united company, protesting that they have performed all things contained in the said charter-party on their part to be performed, and that the said F. G. hath not performed any thing in the said charter-party on his part to be performed, do aver, that the said F. G. after he was dispatched and had received his instructions last-mentioned, that is to say, on the fourth of January 1737, did depart with the said ship from Canton aforesaid: Yet the said F. G. did not faithfully, honestly, and manfully serve the said united company, nor did proceed with the said ship *Suffex* to the said island of St. Helena, according to the true intent and meaning of the said charter-party, and the instructions given him by the said R. A. &c. supercargoes and agents of the said united company as aforesaid: but the said united company further say, that the said F. G. after his departure with the said ship *Suffex* from Canton aforesaid, and before his arrival at the island of St. Helena, that is to say, on the eleventh of March 1737, did dishonestly, unfaithfully, and unmanfully, and without any necessity, and without any good or sufficient cause, voluntarily leave and desert the said ship; whereby, and by reason whereof, all the goods and effects on board the said ship of and belonging to the said united company, of the value of fifty thousand pounds, were entirely lost, and became of no use to the said united company, contrary to the form and effect of the said charter-party, and of the covenant of the said F. G. therein contained; and so the said F. G. hath broken his covenant aforesaid, to the damage of the said united company of fifty thousand pounds; and therefore, &c.

AND the said F. G. by A. B. his attorney, comes, &c. and Plea, that the faith, that the said united company, *actio non*, because, as to the said breach of covenant assigned in this, that the said F. G. did not honestly, faithfully, and manfully serve the said company, he the said F. G. says, that the said united company ought not to have their said action thereof against him, because he saith, that the said F. G. always, from the time of making of the said charter-party during all the time the said F. G. continued in the service of the said united company, according to the true intent and meaning of the said charter-party, and of his covenant aforesaid, that is to say, at L. aforesaid; and of this, &c.: And as to the

said breach of covenant above assigned, in not proceeding with the said ship Suffex to the island of St. Helena in the said declaration mentioned, he the said F. G. says, that after his arrival with the said ship Suffex at Canton aforesaid mentioned in the said declaration, and as soon as he was dispatched from them by the surviving supercargoes and agents as above-mentioned, to wit, fourth January 1737, did with all convenient speed depart and sail with the said ship Suffex from Canton aforesaid in the said voyage, and proceed with the same ship in the said voyage towards the island of St. Helena, according to the instructions and directions of the said surviving supercargoes and agents in that behalf given to him as aforesaid in the said declaration mentioned: But the said F. G. further saith, that the said ship Suffex, in her said voyage from Canton aforesaid towards St. Helena aforesaid, and after her departure from Canton aforesaid, and before her arrival at St. Helena aforesaid, to wit, on the eleventh of March 1737, upon the high seas, by force and violence of the wind and tempest, was wrecked and lost in the sea; by reason whereof the said F. G. could not proceed with the said ship Suffex to St. Helena aforesaid, according to the instructions and directions of the said surviving supercargoes and agents in that behalf given to him as aforesaid; and the said F. G. is ready, &c.; wherefore, &c.: And as to the said breach of covenant above assigned in this, that the said F. G. did dishonestly, unfaithfully, unmanfully, and without any necessity, and without any good or sufficient cause, voluntarily leave and desert the said ship Suffex after his departure with the same ship from Canton aforesaid, and before his arrival at St. Helena aforesaid, the said F. G. says, that he did not dishonestly, unfaithfully, and unmanfully, and without any necessity, and without any good cause, voluntarily leave and desert the said ship Suffex, after his departure with the same ship from Canton aforesaid, and before his arrival at the island of St. Helena aforesaid, contrary to the form and effect of the said covenant in this behalf made; and of this, &c.: And for further plea as to the said breach of covenant above assigned in this, that the said F. G. did, after his departure with the said ship Suffex from Canton aforesaid, and before his arrival at the island of St. Helena aforesaid, dishonestly, unfaithfully, and unmanfully, and without any necessity, and without any good and sufficient cause, voluntarily leave and desert the said ship Suffex, he the said F. G. by leave of the court, &c. further saith, that he the said F. G. after the arrival of the said ship Suffex at Canton aforesaid, and as soon as he was dispatched from them by the said surviving supercargoes and agents above-mentioned, to wit, fourth January 1737, did with all convenient speed depart and set sail with the said ship Suffex from Canton aforesaid in the said voyage, and proceeded with the said ship Suffex in the said voyage towards the island of St. Helena aforesaid, according to the instructions and directions of the said surviving supercargoes and agents in that behalf given as above-mentioned: But the said F. G. further saith,

faith, that the said ship *Sussex*, in her said voyage from Canton aforesaid towards St. Helena aforesaid, to wit, upon the eleventh March 1737, upon the high sea, by force and violence of the wind and tempest, was entirely disabled from proceeding on her said voyage to St. Helena aforesaid, and was then in imminent danger of being lost in the sea, and by means of the said tempest soon after sunk and was lost in the sea; by reason whereof the said F. G. was then and there necessarily and unavoidably, for the necessary preservation of his own life and the lives of many sailors and mariners, and of R. A. &c. two supercargoes of the said company then on board the said ship *Sussex*, forced and obliged with them to leave and desert the said ship, so being disabled and in imminent danger of being sunk and lost in the sea as aforesaid, to wit, at L. aforesaid, in the parish and ward aforesaid; and this, &c.; wherefore, &c.

And the said united company, as to the said plea of the said F. G. as to the said breach of covenant above assigned, in not proceeding with the said ship *Sussex* to the island of St. Helena, as in the said declaration by the said F. G. above pleaded, say, that true it is that the said Ship *Sussex*, after her departure from Canton aforesaid, and before her arrival at St. Helena aforesaid, was lost upon the high seas: but the said united company further say, that long before the said time when the said ship was lost, to wit, on the fifteenth of February 1737, he the said F. G. did dishonestly, unfaithfully, and unmanfully, and without any necessity, and without any good or sufficient cause, voluntarily leave and desert the same ship, in manner and form as the said united company have declared against; wherefore they pray judgment and their damages, by reason of the premises to be adjudged to them, &c. And the said united company, as to the said second plea of the said F. G. as to the said breach of covenant above assigned in this, that the said F. G. did, after his departure with the said ship *Sussex* from Canton aforesaid, and before his arrival at St. Helena, dishonestly, unfaithfully, and unmanfully, and without any good and sufficient cause, voluntarily leave and desert the said ship *Sussex*, by him above pleaded in bar, say, that the said F. G. without the cause by him in his said ship *Sussex* from Canton aforesaid, and before his arrival at St. Helena aforesaid, to wit, on the eleventh of March 1737, did dishonestly, unfaithfully, and unmanfully leave and desert the same ship in manner and form as the said united company have declared against him; and this they pray, &c.

Replication, that the defendant deserted the ship.

And the said F. G. as to the said plea of the said united company, in reply to the said breach of covenant, in not proceeding with the said ship *Sussex* to the island of St. Helena aforesaid, faith, that he the said F. G. did not dishonestly, unfaithfully, and unmanfully, and without any necessity, and without any good and sufficient cause, voluntarily leave and desert from the said ship in

Rejoinder and issue.

Suggestion that one of the sheriff's hath interest, and pray the writ of *venire* to be directed to the other sheriff.

in manner and form as the said united company have above in pleading alledged; and of this, &c. : And hereupon the said united company say, that William Smith and R. Wilmot, esquires, are sheriffs of London, and the said William Smith, one of the said sheriffs, in his own right, is proprietor and hath interest in and to a share and proportion of the principal stock of the said united company, of the value of one thousand pounds, and is a member of the said united company; and this the said united company are ready to verify: and for this cause the said united company pray a writ to be directed to the said R. W. esquire, the other sheriff of London, to cause to come here twelve, &c. to try, &c. joined between the parties, and because the said F. G. doth not deny the aforesaid allegation of the united company, but acknowledges the same, it is granted to them; and therefore let a jury come, &c. Verdict for plaintiffs for twenty-five thousand pounds,

(a) COVENANT ON POLICIES OF ASSURANCE ON SHIPS AND GOODS.

Hilary Term, in the twentieth year of the reign king George the Second.

Declaration against the London Assurance, on a policy of assurance of goods, &c. ship run aground on the sand within the port of London.

LONDON, to wit. The London Assurance were summoned to answer George Moore of a plea, that they keep with him the covenant made between them the said London Assurance, and Fureland Mourgue, and Robert Evance Fitzgerald, by the name of Mourgue, Fitzgerald and Co. for and on account of the said George Moore, according to the force, form, and effect of a certain deed made by the said London Assurance to the said Fuller and Mourgue, and Robert Evance Fitzgerald, by the name of Mourgue, Fitzgerald, and Co. for and on account of the said George Moore; and thereupon the said George Moore, by Daniel Sill his attorney, complains, that whereas, by a certain deed poll, commonly called a policy of assurance, made by the said London Assurance, and by them sealed with their common seal on the fourth day of December in the year of Our Lord 1772, at London aforesaid, to wit, in the parish of St. Mary-le-Bow in the ward of Cheap (which said deed, sealed with the common seal of the said London Assurance, he the said G. M. brings here into court, the date whereof is the same day and year aforesaid), they the said Fuller and Mourgue, and Robert Evance Fitzgerald, by the name of Mourgue, Fitzgerald, and Co. as well in their own name as for and in the name and names, &c. : (b) And the said George Moore doth aver, that the said ship mentioned in the said deed before the time of making the said deed, to wit, on the twenty-fourth

(b) Set out the policy.

(a) Actions on policies on ships, &c. are now more frequently *assumpsit* than covenant. (See *Assumpsit*, Vol. I.)

day

day of November in the said year of Our Lord 1772, was in good safety, to wit, at the coast of Valentia aforesaid mentioned in the said deed, and was then and there loaded with divers goods and merchandizes, and that the said goods and merchandizes so laden on board the said ship as aforesaid, were of very large value, to wit, of the value of all the money ever insured thereon: And the said George Moore further saith, that at the time of the making of the said deed, and from thenceforth and until and at the time of the loss and misfortune hereafter mentioned, he was interested in the said goods and merchandizes to a large value, to wit, of all the money ever insured thereon, to wit, at London aforesaid, in the parish and ward aforesaid: And the said George Moore further saith, that the said ship, with the said goods and merchandizes so laden and being on board her as aforesaid, afterwards, to wit, on the said twenty-fourth day of November in the said year of Our Lord 1772, departed and set sail from the coast of Valentia aforesaid on her said voyage towards and for London aforesaid, and afterwards and before the said goods and merchandizes so laden and being on board the said ship as aforesaid could be safely discharged and landed at London aforesaid in the said deed mentioned, to wit, on the seventeenth day of January in the year of Our Lord 1773, the said ship struck upon the ground in the river Thames, in the port of London aforesaid; by means whereof the said ship became and was filled with water, and thereby the said goods and merchandizes afterwards, to wit, on the same day and year last aforesaid, and before they could be safely discharged and landed at London aforesaid, became and were, by means of the misfortune aforesaid, and of the said water of the said river Thames coming into the said ship and filling the same as aforesaid, wholly damaged, spoiled, and destroyed, and of no use or value to the said George Moore; whereof the said London Assurance afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice, and were then and there liable and requested by the said George Moore to pay him the said sum of two thousand four hundred pounds so by him assured in form aforesaid, according to the form and effect of the said deed, and of their covenant in that behalf so made by them as aforesaid: Yet the said George Moore in fact saith, that the said London Assurance have not paid to the said George Moore the said sum of two thousand four hundred pounds, nor any part thereof, contrary to the form and effect of the said deed, and of their said covenant so made by them in that behalf as aforesaid: And so the said George Moore saith, that the said London Assurance (although often thereto requested), have not kept with and performed to him their aforesaid covenant in manner aforesaid made, but have broken the same, and to perform the same have altogether refused, and still do refuse, to the damage of the said George Moore of three thousand pounds; and therefore he brings this suit, &c.

G. WOOD.

And

Plea, non infre-
git, &c.

And the said London Assurance, by William Brown their attorney, come and defend the wrong and injury, when, &c. and say, that they have not broke their covenant with the said Fureland Morgue and Robert Evance Fitzgerald (by the name of Morgue, Fitzgerald, and Company), for and on account of the said George Moore, in manner and form as he the said George Moore hath above thereof complained against them; and of this the said London Assurance put themselves upon the country, &c. and the said George Moore doth the like: therefore it is commanded to the sheriffs that they cause to come before our lord the king, wheresoever our said lord the king shall then be in England, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the same parties, &c.

On a policy of
assurance, ship
was taken by
enemies.

LONDON, to wit. The London Assurance were summoned to answer Robert Butler and Peter Manger, of a plea that they keep with them the covenant between them, made according to the form and effect of a certain deed made by the said London Assurance to the said Robert Butler and Peter Manger, &c.: And thereupon the said Robert Butler and Peter Manger say, that whereas, by a certain deed, commonly called a policy of assurance made by the said London Assurance, and by them sealed with their common seal, on the nineteenth day of May in the year of Our Lord 1758, at London aforesaid, to wit, in the parish of St. Mary-le-Bow in the ward of Cheap (which said deed, sealed with the common seal of the said London Assurance, they the said Robert Butler and Peter Manger now bring here into court, bearing date the same day and year aforesaid), they the said Robert Butler and Peter Manger, by the names of Butler and Manger, for George Wombell, senior and junior, as well in their own names as for and in the name and names, &c.: (a) And the said Robert Butler and Peter Manger further say, that the said ship called the St. Antonio de Padua in the said deed mentioned, before and at the time of the making of the said deed, and from thence continually afterwards until and at the time of the capture and loss of the said ship hereafter mentioned, was a Spanish ship, and that the said ship, after the making of the said deed, to wit, on the eleventh day of September in the said year of Our Lord 1758, so being a Spanish ship, was in safety at Majorca in the said deed mentioned; and being so in safety, and a Spanish ship, to wit, on the same day and year last aforesaid, divers goods and merchandizes, that is to say, one hundred and sixty pipes of oil, of a great value, to wit, of the value of two thousand pounds, were loaded on board the said ship or vessel at Majorca aforesaid, to be carried there in the said voyage from Majorca aforesaid to Poole in the said deed mentioned; and the said goods and merchandizes remained and continued on board the said ship from thence until and at the time of the loss of the same hereinafter mentioned; and that the said George Wombwell the elder and George Womb-

the

(a) Set out the
policy.

well the younger, and one William Barfoot, at the time of the loading of the said goods and merchandizes on board the said ship as aforesaid, and from thence continually until and at the time of the loss of the said goods and merchandizes hereinafter mentioned, were interested in the said goods and merchandizes to a large value, to wit, to the value of one thousand eight hundred pounds, and that the said assurance so made by the said Robert Butler and Peter Mauger as aforesaid, was so made by them for and on the account of, and in trust for the said George Wombwell the younger and William Barfoot, that is to say, at London aforesaid, in the parish and ward aforesaid: And the said Robert Butler and Peter Mauger further say, that the said ship, with the said goods and merchandizes so loaden and being on board her as aforesaid, afterwards, to wit, on the same day and year last aforesaid, departed and set sail on her said voyage from Majorca aforesaid towards and for Poole aforesaid, but the said goods and merchandizes, or any part thereof, never did arrive at Poole aforesaid, but on the contrary thereof the said ship or vessel, with the said goods and merchandizes so loaden and being on board her as aforesaid, sailing and proceeding on her said voyage, after her said departure from Majorca aforesaid, and before her arrival at Poole aforesaid, to wit, on the same eleventh day of September in the said year of Our Lord 1758 aforesaid, on the high seas, with force and arms was attacked, seized, taken, and carried away by certain subjects of the said lord George the Second, late king of Great Britain, &c.; and the said goods and merchandizes then being and remaining on board the said ship, were thereby then and there taken and carried away, and thereby wholly lost to the proprietors thereof; of all which said premises the said London Assurance afterwards, to wit, on the fifteenth day of December in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice, and were then and there required by the said R. B. and P. M. to pay to them one thousand six hundred and sixty-six pounds of the said one thousand seven hundred pounds so as aforesaid assured, deducting thirty-four pounds, residue of the said one thousand seven hundred pounds, in respect of the loss aforesaid, which said one thousand six hundred and sixty-six pounds the said London Assurance then and there ought to have paid to the said Robert Butler and Peter Mauger, on occasion of the premises aforesaid, according to the tenor and effect of the said deed: yet the said London Assurance did not then, nor have they at any other time whatsoever paid the said one thousand six hundred and sixty-six pounds, or any part thereof, to the said R. B. and P. M. or either of them, but have hitherto altogether refused, and still do refuse to pay the same, and have made default therein, against the form and effect of the said deed, and their covenant made in that behalf as aforesaid. And whereas by a certain other deed, &c.: And the said Robert

ad Count, that
the policy was
made in trust
not contribute,

for G. W. and W. B. that the assureds did labour, &c. but defendant did

Antonio

Antonio de Padua in the said deed mentioned, before and at the time of the making of the said deed, and from thence continually afterwards until and at the time of the capture and loss of the said ship hereinafter mentioned, was a Spanish ship, and that the said ship, after the making of the said last-mentioned deed, to wit, on the eleventh day of September in the said year of Our Lord 1758, so being a Spanish ship, was in safety at Majorca in the said last-mentioned deed mentioned, and being so in safety and a Spanish ship, to wit, on the same day and year last aforesaid, divers goods and merchandizes, to wit, one hundred and sixty pipes of oil, of great value, to wit, of the value of two thousand pounds, were loaden on board the said ship at Majorca aforesaid, to be carried therein the said voyage from Majorca aforesaid to Poole in the said last-mentioned deed mentioned, and the said goods and merchandizes remained and continued on board the said last-mentioned ship from thence until and at the time of the loss or misfortune hereinafter mentioned, and that the said George Wombwell the elder and George Wombwell the younger, and William Barfoot, at the time of the loading of the said last-mentioned goods and merchandizes on board the said last-mentioned ship as aforesaid, and from thence continually until and at the time of the loss or misfortune hereafter next mentioned, were interested in the said last-mentioned goods and merchandizes to a large amount, to wit, to the value of one thousand eight hundred pounds, and that the said assurance so made by the said Robert Butler and Peter Mauger as last aforesaid, was so made by them for and on the account of, and in trust for the said George Wombwell the elder and George Wombwell the younger, and William Barfoot, that is to say, at London aforesaid, in the parish and ward aforesaid: and the said B. R. and P. M. further say, that the said last-mentioned ship, with the said goods and merchandizes so loaden and being on board her as aforesaid, afterwards, to wit, on the same day and year last aforesaid, departed and set sail on her said last-mentioned voyage from Majorca aforesaid towards and for Poole aforesaid, and that the said last-mentioned ship or vessel, with the said last-mentioned goods and merchandizes so loaden and being on board her as aforesaid, sailing and proceeding on her said voyage after her said departure from Majorca aforesaid, and before her arrival at Poole aforesaid, to wit, on the said eleventh day of September in the year aforesaid, on the high seas, with force and arms was attacked, seized, taken, and carried away by certain subjects of the said lord George the Second, late king of Great Britain, &c.; and the said last-mentioned goods and merchandizes then being on board the said last-mentioned ship, were thereby then and there taken and carried away: And the said Robert Butler and Peter Mauger further in fact saith, that the said assured, their factors, servants, and assigns, did thereupon afterwards sue, labour, and travel, for, in, and about the recovery of the said last-mentioned goods and merchandizes, to wit, at London aforesaid, in the parish and ward aforesaid, and that the charges thereof amounted to
a large

a large sum of money, to wit, eight hundred pounds, and that the said governor and company, according to the rate and quantity of the sum in the said last-mentioned deed assured, became liable, and ought to have contributed a large sum of money, to wit, five hundred pounds, to the said charges, that is to say, at London aforeaid, in the parish and ward aforeaid; whereof the said governor and company afterwards, to wit, on the first day of January in the year of Our Lord 1761, had notice, and were then and there required by the said R. B. and P. M. to contribute the said sum of five hundred pounds to the charges aforeaid; nevertheless the said governor and company did not then, nor have they at any time whatsoever contributed the said sum of five hundred pounds, or any part thereof, to the aforeaid charges, but have hitherto altogether refused, and still do refuse to contribute the same, and have made default therein, contrary to the form and effect of the said last-mentioned deed, and of their said covenant made in that behalf as aforeaid. And whereas, &c. the said R. B. and P. M. further say, that the said ship called the said St. Antonio de Padua, in the said last-mentioned deed mentioned, before and at the time of the making of said deed, and from thence continually afterwards, until and at the time of the capture and loss of the said ship hereinafter mentioned, was a Spanish ship, and that the said ship after the making of the said last-mentioned deed, to wit, on the said eleventh day of September 1758, so being a Spanish ship, was in safety at Majorca, in the said last-mentioned deed mentioned, and being so in safety, and a Spanish ship, to wit, on the same day and year last aforeaid, divers goods and merchandizes, that is say, one hundred and sixty pipes of oil, of great value, to wit, of the value of two thousand pounds, were loaden on board the said last-mentioned ship or vessel, at Majorca aforeaid, to be carried there in the said voyage from Majorca aforeaid, to Poole, in the said last-mentioned deed mentioned; and the said last-mentioned goods and merchandizes remained and continued on board the said last-mentioned ship from thence until and at the time of the loss of the same hereinafter mentioned, and that the said George Wombwell the elder, and George Wombwell the younger, at the time of the loading of the said last-mentioned goods and merchandizes on board the said ship as last aforeaid, and from thence continually until and at the time of the loss of the said goods and merchandizes hereinafter mentioned, were interested in the said goods and merchandizes to a large value, to wit, to the value of one thousand eight hundred pounds; and that the said assurance so made by the said R. B. and P. M. as last aforeaid, was so made by them for and on account of and in trust for the said G. W. the elder, and G. W. the younger, that is to say, at London aforeaid, in the parish and ward aforeaid, and the said R. B. and P. M. further say, that the said ship with the said last-mentioned goods and merchandizes so loaded and being on board her as aforeaid, afterwards, to wit, on the same day and year last aforeaid, departed and set sail on her said voyage from Majorca aforeaid, towards and for Poole aforeaid, but the said

3d Count, did not pay a certain loss, making a small deduction.

COVENANT ON POLICIES, &c.

said last-mentioned goods and merchandizes, or any part thereof, never did arrive at Poole aforesaid, but on the contrary thereof, the said ship or vessel, with the said last-mentioned goods and merchandizes so laden and being on board her as aforesaid, sailing and proceeding on her said voyage after her departure from Majorca aforesaid, and before her arrival at Poole aforesaid, to wit, on the said eleventh day of September, in the year last aforesaid, on the high seas, with force and arms was attacked, seized, taken, and carried away by certain subjects of the said lord George the second, late king of Great Britain, &c.; and the said last-mentioned goods and merchandizes then being and remaining on board the said ship, were thereby then and there taken and carried away, and thereby wholly lost to the proprietors thereof; of all which said last-mentioned premises the said London Assurance afterwards, to wit, on the said fifteenth day of December, in the year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice, and were then and there required by the said Robert Butler and Peter Mauger to pay to them one thousand six hundred and sixty-six pounds, parcel of the said one thousand seven hundred pounds so as last aforesaid assured, deducting thirty-four pounds, residue of the said one thousand seven hundred pounds, in respect of the loss aforesaid, which said last-mentioned one thousand six hundred and sixty-six pounds the said London Assurance then and there ought to have paid to the said Robert Butler and Peter Mauger, on occasion of the premises last aforesaid, according to the tenor and effect of the said last-mentioned deed; yet the said London Assurance did not then, nor have they at any other time whatsoever, paid the said last-mentioned one thousand six hundred and sixty-six pounds, or any part thereof, to the said Robert Butler and Peter Mauger, or either of them, but have hitherto altogether refused, and still do refuse to pay the same, and have made default therein against the form and effect of the said last-mentioned deed, and their covenant made in that behalf as aforesaid: And whereas, &c. and the said R. B. and P. M. further say, that the said ship called the St. Antonio de Padua, in the said deed mentioned, before and at the time of the making of the said deed, and from thence continually afterwards, until and at the time of the capture and loss of the said ship hereinafter mentioned, was a Spanish ship; and that the said ship, after the making of the said last-mentioned deed, to wit, on the eleventh day of September, in the said year of Our Lord 1758, so being a Spanish ship, was in safety at Majorca, in the said last-mentioned deed mentioned, and being so in safety, and a Spanish ship, to wit, on the same day and year last aforesaid, divers goods and merchandizes, to wit, one hundred and sixty pipes of oil, of great value, to wit, of the value of two thousand pounds, were loaden on board the said ship at Majorca aforesaid, to be carried therein the said voyage from Majorca aforesaid to Poole, in the said last-mentioned deed mentioned, and the said goods and merchandizes remained and continued on board the said last-mentioned ship from thence until and at the time of the loss or misfortune hereinafter

4th Count.

after mentioned; and that the said G. W. the elder, and G. W. the younger, at the time of the loading of the said last-mentioned goods and merchandizes on board the said last-mentioned ship as aforesaid, and from thence continually until and at the time of the loss or misfortune hereinafter next mentioned, were interested in the said last-mentioned goods and merchandizes to a large value, to wit, to the value of one thousand eight hundred pounds, and that the said assurance so made by the said R. B. and P. M. as last aforesaid, was so made by them for and on the account of and in trust for the said G. W. the elder, and G. W. the younger; that is to say, at London aforesaid, in the parish and ward aforesaid; and the said R. B. and P. M. further say, that the said last-mentioned ship, with the said goods and merchandizes so laden and being on board her as aforesaid, afterwards, to wit, on the same day and year last aforesaid, departed and set sail on her said last-mentioned voyage from Majorca aforesaid, towards and for Pool aforesaid, and that the said last-mentioned ship or vessel, with the said last-mentioned goods and merchandizes so laden, and being on board her as aforesaid, sailing and proceeding on her said voyage, after her said departure from Majorca, and before her arrival at Pool aforesaid, to wit, on the said eleventh day of September, in the year aforesaid, on the high seas with force and arms was attacked, seized, taken and carried away by certain subjects of the said lord George the Second, late king of Great Britain, &c. and the said last-mentioned goods and merchandizes then being on board the said last-mentioned ship, were thereby then and there taken and carried away, and the said R. B. and P. M. further in fact say, that the said assured, their factors, servants, and assigns, did thereupon afterwards sue, labour, and travel for in and about the recovery of the said last-mentioned goods and merchandizes, to wit, at London aforesaid, in the parish and ward aforesaid; and that the charges thereof amounted to a large sum of money, to wit, eight hundred pounds, and the said Governor and Company according to rate and quantity of the sum in the said last-mentioned deed assured, became liable and ought to have contributed a large sum, to wit, five hundred pounds with said charges, that is to say, at London aforesaid, in the parish and ward aforesaid, whereof the said Governor and Company afterwards, to wit, on the first day of January, in the year of Our Lord 1761, there had notice, and were then and there requested by the said R. B. and P. M. to contribute the said sum of five hundred pounds to the charges aforesaid: nevertheless the said Governor and Company did not then, nor have they at any other time whatsoever contributed the said sum of five hundred pounds, or any part thereof, to the aforesaid charges; but have hitherto altogether refused, and still do refuse to contribute the same, and have made default therein, contrary to the form and effect of the said last-mentioned deed, and of their said covenant made in that behalf as aforesaid, and so the said R. B. and P. M. say, that the said Governor and Company, although often requested, have not kept their said covenant so made with them, although often requested, but have

Averment that charges of labour, &c. amounted to 800l. and that defendants refused to contribute.

COVENANT ON POLICIES

broken the same, and to keep the same with the said R. B. and P. M. have hitherto wholly refused, and still do refuse, to the said R. B. and P. M. their damage of two thousand two hundred pounds; and therefore they bring suit, &c.

Plea, *non infregit conventiones.*

And the said (London Assurance,) by Philip Roberts their attorney, come and defend the wrong and injury, when, &c.; and say, that they have not broke their covenants in the aforesaid policies of assurance contained, or any of them, in manner and form as the said R. B. and P. M. above complain against them, and of this they put themselves upon the country, and the said R. B. and P. M. do the like; therefore the sheriff is commanded that he cause to come before our lord the king, from the day of the Holy Trinity in three weeks, wheresoever he shall then be, in England, &c. by whom, &c. and who within, &c. to recognize, &c. because as well, &c. the same day is given to the parties aforesaid there, &c.

ON POLICIES AGAINST FIRE.

Declaration on a policy of insurance from loss by fire.

Plaintiff accepted the policy.

Provisions in the deed of settlement of the Insurance office for indemnifying the directors.
Vide Mr. Wood's opinion, infra.

MIDDLESEX, *ff.* J. D. complains against T. W. J. W. and J. A. being, &c. of a plea of covenant broken, for that whereas by a certain deed poll, commonly called a policy of insurance, made by the said defendants, and sealed with their seals, on, A. D. at , in the said county of M. which said deed, sealed, &c.: it is witnessed, &c. as by the said policy of insurance it more fully appears, which said policy of insurance the said J. D. then and there accepted, and the said J. D. further saith, that by the said deed of settlement it was and is provided, that the directors of the said contributionship for the time being, or three of them, should execute all policies; and that all the lawful orders and acts of the directors and trustees of the said contribution should bind every member thereof, and that the said directors should be indemnified in the execution of their trusts by the said contributionship, and such indemnity should be first made good out of the effects of the said contributionship: And the said J. D. further saith, that after the making of the aforesaid deed, now brought here into court, and before the expiration of seven years from the date thereof, the said policy being in full force, to wit, on the sixth of June 1780, the said brick house, &c. in the said policy of insurance mentioned, being of great value, to wit, of the value of three thousand three hundred pounds, were burnt down and demolished by fire, to wit, at the parish aforesaid; and that notice of such damage by fire forthwith afterwards, to wit, on the said sixth of June, in the year last aforesaid, at the parish aforesaid, was given by the said J. D. to the then directors of the said contribution, and their proper officers and agents in that behalf, according to the form and effect of the said policy of insurance, and that the directors of the said contributionship, for the

time

time being, their officers, agents, workmen, and assigns, did not, at the charge of the said contributionship, begin to rebuild or repair the said brick house, &c. within sixty days next after the brick house, &c. were so as aforesaid burnt down and demolished by fire, nor have the said directors of the said contributionship for the time being, their officers, agents, workmen, or assigns, procured the said brick house, &c. within a reasonable time after the burning down and demolishing thereof by fire as aforesaid, to be rebuilt or repaired, and put into as good condition, as the same were before such fire happened as aforesaid, except gilding, painting, &c.: And the said J. D. further saith, that the monies, securities, and effects of the said contributionship, at the end of sixty days next after the said brick house, &c. were so as aforesaid burnt down and demolished by fire, and continually from thence, hitherto were of much greater value than three thousand three hundred pounds, to wit, of the value of fifty thousand pounds, yet the trustees or treasurers, for the time being, of the said contributionship, have not raised, paid, and satisfied by and out of the monies, securities, and effects of the said contributionship, unto the said J. D. the said sum of three thousand three hundred pounds, at the end of sixty days next after the said brick house and offices were so as aforesaid burnt down and demolished by fire, or at any time since as they ought to have done, according to the form and effect of the said policy of insurance; and so the said J. D. saith, that defendants, although often requested, have not kept the said covenant so made with the said J. D. as aforesaid, but have broken the same, and to keep the same with the said J. D. defendants have hitherto altogether refused, and still do refuse, to the damage of said J. D. of five thousand pounds; and therefore, &c.

I doubt whether the words of the policy amount to a covenant to bind the defendants personally to pay the loss, however, in order to assist such a construction, I think it may be proper to insert in the declaration (as I have done),

the provision in the settlement for the indemnity of the directors, from which, I think, an inference arises that the policies were personally to bind them, otherwise there could be no reason for indemnity.

G. WOOD.

OUR lord the king hath sent to his trusty and well-loved sir James Eyre, knight, his chief justice of the bench here, his writ, closed in these words: George the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth; to our trusty and well-beloved sir James Eyre, knight, our chief justice of the bench, greeting: Forasmuch as in the record and process, as also in giving of judgment in a plaint which was in our court before you, and your associates, our justices of the bench, by our writ between Jacob Wood, Charles Rogers, and Charles John Hemans, assignees of the estate and effects of Joseph Thomas Lockyer and James Wilder Bream, being bankrupts, and Thomas Worsley, gentleman, of a plea of covenant broken, as it is said manifest error hath intervened, to the great damage of the said Thomas Worsley, as by his complaint we are informed, we willing that the said error (if any be)

Proceedings in error. Writ.

COVENANT ON POLICIES

be duly amended, and full and speedy justice done to the said parties in this behalf, do command you, that if judgment be given thereupon, then you send to us distinctly and plainly, under your seal, the record and process of the said plaint, with all things touching the same, and this writ, so that we may have them in eight days of St. Hilary, wheresoever we shall then be in England, that inspecting the record and process aforesaid, we may cause further to be done thereupon for amending the said error as of right, and according to the law and custom of England shall be meet to be done. Witness ourself at Westminster, the third day of December, in the thirty-sixth year of our reign. HINGESTON.

Return.

The answer of sir James Eyre, knight, chief justice, within named.

The record and process of the plaint within mentioned, with all things touching the same, I send before our lord the king, wheresoever, &c. at the day within contained in a certain record to this writ annexed, as I am within commanded. JAMES EYRE.

Pleas inrolled at Westminster, before the right honourable sir James Eyre, knight, and his brethren justices of his majesty's court of common bench, of Trinity Term, in the thirty-fourth year of the reign of our sovereign lord George the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth.—Roll 964—5—6—7—8.

Declaration by assignees of a bankrupt in covenant on a policy of insurance against fire, on dwelling-house, stock in trade, &c.

London, to wit. Thomas Worsley, late of London, gentleman, was summoned to answer Jacob Wood, Charles Rogers, and Charles John Hemans, assignees of the estate and effects of Joseph Thomas Lockyer and James Wilder Bream, being bankrupts, according to the form and effect of the statutes made and provided concerning bankrupts, of a plea of breach of covenant, whereupon the said Jacob Charles and Charles John, by Alexander Annesley, their attorney, complain, for that whereas by a certain deed poll, commonly called a policy of insurance, made before the said Joseph Thomas and James Wilder became bankrupts, to wit, on the ninth day of March, in the year of Lord 1792, at London aforesaid, in the parish of St. Mary-le-bow, in the ward of Cheap, and sealed with the seal of the said Thomas, but which said deed poll or policy of insurance hath been since burnt by fire, or otherwise destroyed, and therefore cannot be produced here in court by the said Jacob Charles and Charles John: It is witnessed that the said Joseph Thomas and James Wilder, therein called Messrs. Joseph Thomas Lockyer and James Wilder Bream, No. 33, Tavistock-street, linen-draper, had paid the sum of eleven pounds sixteen shillings to the Phoenix Assurance Company, of London, and having agreed to pay, or cause to be paid to them at their office in Lombard-street, the sum of ten pounds eleven shillings on the twenty-fifth day of March 1793, and the like sum yearly on the day aforesaid, during the continuance of the

the said policy for insurance from loss or damage by fire, not exceeding in each case the sum or sums therein after recited upon the property therein described, in the place or places therein set forth, and not elsewhere, unless allowed by indorsement previously made, as set forth in the margin, *videlicet*, on their interest in the lease of their then dwelling-house, only brick, situate as aforesaid, not exceeding two hundred and seventy pounds; household goods therein, three hundred and fifty pounds; printed books therein, forty pounds; stock and utensils therein, six thousand pounds; wearing apparel therein, two hundred pounds; plate therein, fifty pounds; china, glass, and looking-glass plates therein, fifty pounds; liquors therein, twenty pounds; mathematical and musical instruments therein, twenty pounds; and it is by the said deed or policy declared, that the intent of the insurance in the aforesaid lease was to cover to the said Messrs. Joseph Thomas and James Wilder the value of their improvements in the aforesaid buildings, and by the said deed or policy the said Thomas Worsley did covenant with the said Joseph Thomas and James Wilder, that from the seventh day of February, in the year of Our Lord 1792, and so long as the said assureds should duly pay, or cause to be paid the premium aforesaid, at the times aforesaid, and the trustees or directors of the said company for the time being should agree to accept the same, *the capital stock and funds of the said company should be subject and liable to pay to the said assureds, his, her, or their heirs, executors, and administrators, all such damage and loss which the said assureds should suffer by fire on the property therein mentioned, not exceeding the sum of seven thousand pounds, according to the tenor of their printed proposals delivered with the said policy, as by the said deed poll or policy of assurance, relation being thereunto had will more fully appear: And the said Jacob Charles and Charles John further say, that in the printed proposals mentioned in and referred to by the said policy of assurance, it is expressed and declared, that the said company would not be accountable for the amount of any loss or damage arising from fire caused by foreign invasion, or civil commotion, or by any military or usurped power; and also that all persons assured by the said company sustaining any loss or damage by fire, should forthwith give notice to the company at their office in Lombard-street, and as soon as possible after, deliver in as particular an account of their loss or damage as the nature of their case would admit of, and make proof of the same by their oath or affirmation, and by their books of accounts, or other proper vouchers as should be reasonably required, and should procure a certificate under the hands of the minister and churchwardens, and of some reputable householders of the parish, not concerned in such loss, importing that they were acquainted with the character and circumstances of the person or persons insured, and do know, or do verily believe that he, she, or they really and by misfortune, without any kind of fraud or evil practice, have sustained by such fire, the loss and damage therein mentioned; and in case any difference should arise between the as-*

insured and the company, touching any loss or damage, such difference should be submitted to the judgment and determination of arbitrators indifferently chosen, whose award in writing should be conclusive and binding to all parties, and *when any loss or damage should have been duly proved*, the insured should immediately receive satisfaction to the full amount of the same without allowance of discount, or any other deduction whatever: And the said Jacob Charles and Charles John in fact say, that after the making of the said deed or policy of assurance, and after the seventh day of February, in the year of Our Lord 1792, and whilst the said deed or policy remained and continued in full force and effect, and before and until, and at the time of the loss hereinafter next mentioned, there were in the dwelling house of the said Joseph Thomas and James Wilder, in the said deed or policy of assurance mentioned, divers household goods, printed books, stock and utensils, wearing apparel, plate, china, glass, and looking-glass, plates, liquors, and mathematical and musical instruments, wherein the said Joseph Thomas and James Wilder, during all that time were interested, and that the value thereof, together with the value of the interest of them the said Joseph Thomas and James Wilder in the said lease in the said policy of assurance mentioned, at the time of the loss hereinafter next mentioned, amounted to divers large sums of money, to wit, to all the monies by them insured thereon, that is to say, at London aforesaid, in the parish and ward aforesaid: And the said Jacob Charles and Charles John further say, that the said dwelling-house, and all the said household goods, printed books, stock and utensils, wearing apparel, plate, china, glass, looking-glass, plates, and mathematical and musical instruments, being in the said dwelling-house, were, after the making of the said deed or policy of assurance, and after the said seventh day of February, in the said year of Our Lord 1792, and whilst the said deed or policy of assurance remained in full force and effect, and before the said Joseph Thomas and James Wilder became bankrupts, to wit, on the first day of July in the year of Our Lord 1792, burnt, consumed, lost, and destroyed by fire, which did not happen, nor was caused by any foreign invasion or civil commotion, or by any military or usurped power whatsoever, to wit, at London aforesaid, in the parish and ward aforesaid; and that the loss and damage which thereby happened and accrued to them the said Joseph Thomas and James Wilder amounted to a large sum of money, to wit, to the sum of seven thousand pounds, to wit, at London aforesaid, in the parish and ward aforesaid: And the said Jacob Charles and Charles John further say, that all the books of accounts of the said Joseph Thomas and James Wilder were burnt and destroyed by the said fire, to wit, at London aforesaid, in the parish and ward aforesaid: And the said Jacob Charles and Charles John further say, that the said Joseph Thomas and James Wilder did forthwith, after the said loss, and before they became bankrupts,

Loss amounted to seven thousand pounds.

Performance of conditions in the printed proposals.

bankrupts, to wit, on the same day and year last aforesaid, *give notice of the said loss to the said company, at their said office in Lombard-street: and did also, as soon as possible after the said loss, to wit, on the day and year last aforesaid, deliver into the said company, at their said office as particular an account of their loss and damage as the nature of the case did admit, to wit, at London aforesaid, in the parish and ward aforesaid, and were then and there also ready and willing to make, and did then and there tender and offer to make proof of the said loss and damage by their oath, and did also then and there tender and offer to produce such vouchers as could be reasonably required in that behalf: And the said Jacob Charles and Charles John further say, that the said Joseph Thomas and James Wilder did also, as soon as possible after their said loss, and before they became bankrupts, to wit, on the day and year last aforesaid, procure and deliver unto the said company, at their said office, a certificate under the hands of divers reputable householders of the parish in which the said dwelling-house was situate, not concerned in the said loss, to wit, one William Smith, one Elizabeth Rippon, one John Ellis, and one J. E. Burghall, importing that they the said householders were acquainted with the character and circumstances of the said Joseph Thomas and James Wilder, and did verily believe that they the said Joseph Thomas and James Wilder really and by misfortune, and without any kind of fraud or evil practice, had sustained by the said fire the loss and damage herein and in the said certificate mentioned, to wit, at London aforesaid, in the parish and ward aforesaid: And the said Jacob Charles and Charles John further say, that the said Joseph Thomas and James Wilder did, as soon as possible after their said loss, and before they became bankrupts, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, apply to and request one Edward Embry, then being minister of the said parish in which the said last-mentioned dwelling-house was situate, and also one Hassell Hutchins, and one John Bellamy, then being churchwardens of the said parish, to sign such certificate of the said last-mentioned loss, as by the said last-mentioned proposals required in that behalf, in order that the said Joseph Thomas and James Wilder might thereupon deliver such certificate to the said company, according to the form and effect of the said printed proposals: but the said minister and churchwardens, without any reasonable or probable cause whatsoever for so doing, did then and there wrongfully and unjustly refuse, and ever since have refused, and still do wholly refuse to sign any such certificate as aforesaid; whereof the said company afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; and although the capital stock and funds of the said company, at the time of the said loss, were, and from that time hitherto have been, and yet are sufficient to pay and reimburse the said Joseph Thomas and James Wilder all such damage and loss as they have suffered by the said fire on their said property, to wit, at London aforesaid, in the parish and ward aforesaid; whereof the said Tho-*

The certificate they delivered.

Did request the minister.

COVENANT ON POLICIES

ed Count, that
the company
have not sub-
mitted to arbi-
tration.

mas Worsley afterwards, to wit, on the same day and year last
aforesaid, there had notice; and although a difference arose be-
tween the said Joseph Thomas and James Wilder, and the said
company, after the happening of the said loss and damage, and
before the said Joseph Thomas and James Wilder became bank-
rupts, touching the said loss and damage, to wit, on the same
day and year last aforesaid, at London aforesaid, in the parish and
ward aforesaid; and although the said Joseph Thomas and James
Wilder always after the happening of the said loss and damage
until they became bankrupts, and the said Jacob Charles and
Charles John, assignees as aforesaid, from that time hitherto have
been ready and willing to submit, and the said Jacob Charles and
Charles John, since they became such assignees as aforesaid, to
wit, on the sixth day of June, in the said year of Our Lord 1793,
at London aforesaid, in the parish and ward aforesaid, tendered
and offered to the said company to submit the said difference to
the judgment and determination of arbitrators, to be indifferently
chosen according to the form and effect of the said printed pro-
posals: yet the said company have not, although often requested,
at any time hitherto paid or satisfied to the said Joseph Thomas and
James Wilder, before they became bankrupts, or to the said Jacob
Charles and Charles John, assignees as aforesaid, since the said
bankruptcy, the said loss or damage, or any part thereof, nor has
the said company submitted the said difference to the judgment
and determination of such arbitrators as aforesaid, but have always
hitherto refused, and still refuses so to do, contrary to the form
and effect of the said deed or policy of assurance, and of the co-
venant of the said Thomas Worsley therein in that behalf made
as aforesaid: And whereas also by a certain other deed poll,
commonly called a policy of insurance, made before the said
Joseph Thomas and James Wilder became bankrupts, to wit, on
the ninth day of March, in the year of Our Lord 1792, at Lon-
don aforesaid, in the parish and ward aforesaid, and sealed with
the seal of the said Thomas, but which said last-mentioned deed-
poll or policy of insurance hath been since burnt by fire, or other-
wise destroyed, and therefore cannot be produced here in court by
the said Jacob Charles and Charles John: It is witnessed that the
said Joseph Thomas and James Wilder, therein called Messrs.
Joseph Thomas Lockyer and James Wilder Bream, No. 33,
Tavistock-street, linen drapers, had paid the sum of eleven pounds
sixteen shillings to the Phoenix Assurance Company of London,
and having agreed to pay, or cause to be paid to them at their of-
fice in Lombard-street, the sum of ten pounds eleven shillings,
on the twenty-fifth day of March 1793, and the like sum yearly
on the day aforesaid during the continuance of the said last-
mentioned policy of insurance from loss or damage by fire, not
exceeding in each case the sum or sums thereafter recited, upon
the property therein described in the place or places therein set
forth, and not elsewhere, unless allowed by indorsement previ-
ously made, as set forth in the margin *videlicet*, on the interest in
the

the lease of their then dwelling-house, only brick, situate as aforesaid, not exceeding two hundred and seventy pounds, household goods therein, three hundred and fifty pounds; printed books therein, forty pounds; stock and utensils therein, six thousand pounds; wearing apparel therein, two hundred pounds; plate therein, fifty pounds; china, glass, and looking-glass plates therein, fifty pounds; liquors therein, twenty pounds; mathematical and musical instruments therein twenty pounds: and it is by the said last-mentioned deed or policy declared, that the intent of the insurance on the aforesaid lease was to cover to the said Messrs. Joseph Thomas and James Wilder the value of their improvements in the aforesaid buildings; and by the said last-mentioned deed-poll or policy, the said Thomas Worsley did covenant with the said Joseph Thomas and James Wilder, that from the seventh day of February, in the year of Our Lord 1792, and so long as the said assureds should duly pay or cause to be paid the said premium aforesaid at the times aforesaid, and the trustees or directors of the said company for the time being should agree to accept the same, the capital stock and funds of the said company should be subject and liable to pay to the said assureds, his, her, or their heirs, executors, and administrators, all such damage and loss which the said assureds should suffer by fire on the property therein mentioned, not exceeding the sum of seven thousand pounds, according to the tenor of their printed proposals delivered with the said last-mentioned policy, as by the same deed-poll or policy of assurance, relation being thereunto had will more fully appear: And the said Jacob Charles and Charles John further say, that in the printed proposals mentioned in and referred to by the said last-mentioned policy of assurance, it is expressed and declared that the said company would not be accountable for the amount of any loss or damage arising from fire caused by foreign invasion or civil commotion, or by any military or usurped power; and also, that all persons assured by the said company sustaining any loss or damage by fire, should forthwith give notice to the company at their office in Lombard-street, and as soon as possible after deliver in as particular an account of their loss or damage as the nature of the case would admit of, and make proof of the same by their oath or affirmation, and by their books of accounts or other proper vouchers as should be reasonably required, and should procure a certificate under the hands of the minister and churchwardens, and of some reputable householders of the parish not concerned in such loss, importing that they are acquainted with the character and circumstances of the person or persons insured, and do know and do verily believe that he, she, or they really, and by misfortune, without any kind of fraud or evil practice, had sustained by such fire the loss and damage therein mentioned; and in case any difference should arise between the assureds and the company touching any loss or damage, such difference should be submitted to the judgment and determination of arbitrators indifferently chosen, whose award in writing should be conclusive and binding to all parties,

parties, and when any loss or damage should have been duly proved, the insured should immediately receive satisfaction to the full amount of the same, without allowance of discount or any deduction whatever : And the said Jacob Charles and Charles John in fact say, that after the making of the said last-mentioned deed or policy of assurance, and after the seventh day of February, in the year of Our Lord 1792, and whilst the said last-mentioned deed or policy remained in full force and effect, and before and until, and at the time of the loss hereinafter mentioned, there were in the dwelling-house of the said Joseph Thomas and James Wilder, in the said last-mentioned deed or policy of assurance mentioned, divers household goods, printed books, stock and utensils, wearing apparel, plate, china, glass, looking-glass plates, liquors, and mathematical and musical instruments, wherein the said Joseph Thomas and James Wilder during all that time were interested, and that the value thereof, together with the value of the interest of them the said Joseph Thomas and James Wilder, in the said lease in the said last-mentioned policy of assurance mentioned, at the time of the loss hereinafter mentioned, amounted to divers large sums of money, to wit, to all the monies by them insured thereon (that is to say), at London aforesaid, in the parish and ward aforesaid : And the said Jacob Charles and Charles John further say, that the said last-mentioned dwelling-house, and all the said household goods, printed books, stock and utensils, wearing apparel, plate, china, glass, looking-glass plates, and mathematical and musical instruments, being in the said last-mentioned dwelling-house, were, after the making of the said last-mentioned deeds or policy of assurance, and after the said seventh day of February, in the said year of Our Lord 1792, and whilst the said deed or policy of assurance remained in full force and effect, and before the said Joseph Thomas and James Wilder became bankrupts, to wit, on the first day of July in the year of Our Lord 1792, burnt, consumed, lost, and destroyed by fire, which did not happen, nor was caused by any foreign invasion or civil commotion, or by any military or usurped power whatsoever, to wit, at London aforesaid, in the parish and ward aforesaid, and that the loss and damage which thereby happened and accrued to the said Joseph Thomas and James Wilder amounted to a large sum of money, to wit, the sum of seven thousand pounds, to wit, at London aforesaid, in the parish and ward aforesaid ; whereof the said company afterwards, to wit, on the same day and year last aforesaid, there had notice ; whereupon a certain difference then and there arose and happened by and between the said Joseph Thomas and James Wilder before they became bankrupts, and the said company, touching the said loss and damage ; and although the said Joseph Thomas and James Wilder always after the happening of the said loss or damage until they became bankrupts ; and the said Jacob Charles and Charles John, assignees as aforesaid, from that time hitherto have been ready and willing to submit, and the said Jacob Charles and Charles John, assignees

assignees as aforesaid, since they became such assignees as aforesaid, to wit, on the sixth day of June, in the said year of Our Lord 1793, at London aforesaid, in the parish and ward aforesaid, tendered and offered to the said company to submit the said last-mentioned difference to the judgment and determination of arbitrators to be indifferently chosen according to the form and effect of the said printed proposals; and although the capital stock and funds of the said company, at the time of the happening of the said last-mentioned loss, were, and from that time hitherto have been, and yet are sufficient to pay and reimburse all such damage and loss as the said Joseph Thomas and James Wilder have suffered by the said last-mentioned fire, to wit, at London aforesaid, in the parish and ward aforesaid; of all which premises the said Thomas Worsley afterwards, to wit, on the day and year last aforesaid, there had notice: Yet the said company have not at any time hitherto submitted the said last-mentioned difference to the judgment and determination of such arbitrators aforesaid, but have always hitherto refused, and still refuse so to do, and the said last-mentioned loss and difference, and every part thereof, still remains wholly due and unsatisfied, contrary to the form and effect of the said last-mentioned deed or policy of assurance, and of the said covenant of the said Thomas Worsley so made in that behalf as aforesaid: And so the said Jacob Charles and Charles John in fact say, that the said Thomas Worsley hath not kept his said covenant so made with the said Joseph Thomas and James Wilder as aforesaid, but hath broken the same, and to keep the same with them before they became bankrupts, or with the said Jacob Charles and Charles John, since the said Joseph Thomas and James Wilder became bankrupts, the said Thomas Worsley hath hitherto wholly refused, and still doth refuse, to the damage of the said Jacob Charles and Charles John of ten thousand pounds; and therefore they bring suit, &c.

AND the said Thomas Worsley, by Edward Wollstonecraft 1st Plea, bank-
his attorney, comes and defends the wrong and injury, when, &c. rupt not inter-
and as to the supposed breach of covenant in the said first Count rested.
of the said declaration mentioned, the said Thomas Worsley says, that the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees of the estate and effects of the said Joseph Thomas Lockyer and James Wilder Bream as aforesaid, ought not to have or maintain their aforesaid action thereof against him; because he says, that the said Joseph Thomas and James Wilder were not interested in the lease of the said dwelling house in the said first Count of the said declaration mentioned, or in any household goods, printed books, stock, and utensils, wearing apparel, plate, china, glass, and looking-glass, plates, liquors, and mathematical and musical instruments, burnt, consumed, lost and destroyed by fire therein in manner and form as the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, said,

2d, Fire happened by fraud, and evil practice of bankrupts.

3d, That minister and churchwarden did not refuse to sign certificate without reasonable and probable cause.

4th Plea to 2d Count like the first.

5th Plea like 3d.

said, have above in the said first Count in that behalf alledged; and of this he the said Thomas Worsley puts himself upon the country, &c.: And for further plea in this behalf as to the supposed breach of covenant in the said first Count of the said declaration the said Thomas Worsley, by the like leave of the court here for this purpose had and obtained according to the form of the statute in that case made and provided, says, that the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, ought not to have or maintain their aforesaid action thereof against him; because he says, that the supposed loss and damage in the said first Count of the said declaration mentioned, happened and was occasioned by the fraud and evil practice of the said Joseph Thomas and James Wilder, or one of them by themselves, or their servants and agents in that behalf, to wit, at London aforesaid, in the parish and ward aforesaid; and this he the said Thomas Worsley is ready to verify; wherefore he prays judgment if the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid ought not to have or maintain the aforesaid action thereof against him: And for further plea in this behalf as to the said supposed breach of covenant in the said first Count of the said declaration mentioned, the said Thomas Worsley, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said Jacob Wood, Charles Rogers, and Charles John Hemans ought not to have or maintain their aforesaid action thereof against him; because he says, *that the said minister and churchwardens in the said first Count mentioned, did not refuse, and ever since have not refused, and still do not refuse, wrongfully and injuriously, without any reasonable or probable cause whatsoever for so doing, to sign such certificate as in the said first Count is mentioned in manner and form as the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, have above in the said first Count in that behalf alledged; and of this he the said Thomas Worsley puts himself upon the country, &c.*: And for further plea in this behalf as to the said supposed breach of covenant in the said second Count of the said declaration mentioned, the said Thomas Worsley says, that the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, ought not to have or maintain their aforesaid action thereof against him; because he says, that the said Joseph Thomas and James Wilder were not interested in the lease of the said dwelling house in the said second Count in the said declaration mentioned, or in any household goods, furniture, books, stock, and utensils, wearing apparel, plate, china, glass, and looking-glass plates, liquors, and mathematical and musical instruments, burnt, consumed, lost, and destroyed by fire therein, in manner and form as the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, have above in the said second Count in that behalf alledged; and of this he the said Thomas Worsley puts himself upon the country, &c.: And for

for further plea in this behalf as to the said supposed breach of covenant in the said second Count of the said declaration mentioned, the said Thomas Worsley, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, ought not to have or maintain their aforesaid action thereof against him; because he says, that the said supposed loss and damage in the said second Count of the said declaration mentioned happened and was occasioned by the fraud and evil practice of the said Joseph Thomas and James Wilder, or one of them, by themselves or their servants and agents, in that behalf, to wit, at London aforesaid, in the parish and ward aforesaid; and this he the said Thomas Worsley is ready to verify; wherefore he prays judgment if the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, ought to have or maintain their aforesaid action thereof against him, &c.: And for a further plea in this behalf as to the said supposed breach of covenant in the said second Count of the said declaration mentioned, the said Thomas Worsley, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, ought not to have or maintain their aforesaid action thereof against him; because he says, “that the said dwelling-house in the said deed poll, or policy of assurance from thence until and at the time of the supposed loss in the said second Count of the said declaration mentioned, was situated in the parish of St. Paul, Covent-Garden, in the county of Middlesex, and that neither the said Joseph Thomas Lockyer and James Wilder Bream, nor the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, have nor hath any of them procured any such certificate under the hands of the minister, church-wardens, and any respectable inhabitants of the said parish of St. Paul, Covent-Garden, not concerned in the said supposed loss, as is mentioned and required in that behalf, in and by the said printed proposals in the said declaration and policy of assurance mentioned;” and this he the said Thomas Worsley is ready to verify; wherefore he prays judgment if the said Jacob Wood, Charles Rogers, and Charles John Hemans ought to have or maintain their aforesaid action thereof against him, &c.

J. ADAIR.

3d Plea to 2d Count, have not procured certificate from minister, church-wardens, and respectable inhabitants, &c.

And the said Jacob Wood, Charles Rogers, and Charles John Hemans, as to the plea of the said Thomas Worsley by him first above pleaded in bar, as to the said breach of covenant in the first Count of the said declaration mentioned, and whereof the said Thomas Worsley puts himself upon the country do so likewise: And as to the said plea of the said Thomas Worsley, by him

Replication, taking issue on all the pleas, except the last, and to that, bankrupts did as soon as possible produce two inhabitants, but that the minister and church-wardens, without any reasonable cause, refused to sign a certificate.

COVENANT.—REPLICATION.

secondly above pleaded in bar as to the breach of covenant in the first Count of the said declaration mentioned, the said Jacob Wood, Charles Rogers, and Charles John Hemans, say, that they by reason of any thing in that plea alledged, ought not to be barred from having and maintaining their said action thereof against the said Thomas Worsley; because they say, that the said loss and damage in the said first Count of the said declaration mentioned, did not happen and was not occasioned by the fraud and evil practice of the said Joseph Thomas and James Wilder, or one of them, by themselves or their servants and agents in that behalf, in manner and form as the said Thomas Worsley in his said plea secondly above pleaded in bar to the said breach of covenant in the said first Count of the said declaration mentioned hath above alledged; and this the said Jacob Wood, Charles Rogers, and Charles John Hemans pray may be enquired of *by the country, &c.*: And as to the plea of the said Thomas Worsley by him thirdly above pleaded in bar as to the breach of covenant in the said first Count of the said declaration mentioned, and whereof the said Thomas Worsley puts himself upon the country, they the said Jacob Wood, Charles Rogers, and Charles John Hemans *do so likewise*: And as to the plea of the said Thomas Worsley by him first above pleaded in bar as to the breach of covenant in the second Count of the said declaration mentioned, and whereof the said Thomas Worsley puts himself upon the country, the said Jacob Wood, Charles Rogers, and Charles John Hemans *do so likewise*: And as to the plea of the said Thomas Worsley by him secondly above pleaded in bar as to the breach of covenant in the second Count of the said declaration mentioned, the said Jacob Wood, Charles Rogers, and Charles John Hemans say, that they, by reason of any thing in that plea alledged, ought not to be barred from having and maintaining their said action thereof against the said Thomas Worsley; because they say, that the said loss and damage in the said second Count of the said declaration mentioned, did not happen, and was not occasioned by the fraud and evil practice of the said Joseph Thomas and James Wilder, or one of them, by themselves or their servants and agents, in that behalf, in manner and form as the said Thomas Worsley in his said plea secondly above pleaded in bar to the breach of covenant in the said second Count in the said declaration mentioned hath above alledged; and this the said Jacob Wood, Charles Rogers, and Charles John Hemans pray may be enquired of *by the country, &c.*: And as to the plea of the said Thomas Worsley by him lastly above pleaded in bar as to the breach of covenant in the second Count of the said declaration mentioned, they the said Jacob Wood, Charles Rogers, and Charles John Hemans say, that they, by reason of any thing in that plea alledged, ought not to be barred from having and maintaining their said action against the said Thomas Worsley; because they say, "that the said *Joseph Thomas and James Wilder did, as soon as possible after their said loss, and before they became bankrupts, to wit, on the said first day*

of

of July, in the year of Our Lord 1792, procure and deliver to the said company at their said office such certificate as is mentioned and required in that behalf, in and by the said printed proposals in the said declaration and policy of assurance mentioned, under the hands of divers reputable householders of the said parish of St. Paul, Covent-Garden, in which parish the said dwelling-house was situate, *not concerned in the loss*, to wit, one William Smith, one Elizabeth Rippon, one John Ellis, one J. E. Burghall; but that the minister and church-wardens of the said parish have wrongfully refused to sign any such certificate," without any reasonable or probable cause whatsoever for so doing, to wit, at London aforesaid, in the parish and ward aforesaid; whereof the said company afterwards, to wit, on the said first day of July, in the year of Our Lord 1792 aforesaid, there had notice; and this the said Jacob Wood, Charles Rogers, and Charles John Hemans are ready to verify; wherefore they pray judgment and their damages, by reason of the breach of covenant in the said second Count of the said declaration above mentioned, to be adjudged to them, &c.

S. LE BLANC.

And the said Thomas Worsley, as to the said several replications of the said Jacob Wood, Charles Rogers, and Charles John Hemans, whereof they have prayed that it may be enquired of by the country, doth the like: And as to the said plea by them in reply pleaded to his said plea by him lastly above pleaded in bar, as to the breach of covenant in the said second Count of the said declaration mentioned, says, that they, by reason of any thing therein alledged, ought not to have or maintain their aforesaid action against him; because, protesting that the said Joseph Thomas and James Wilder did not procure and deliver to the said company any such certificate as in that replication is mentioned, for rejoinder in this behalf the said Thomas Worsley says, "that the said minister and church-wardens of the said parish have not wrongfully refused and do refuse to sign any such certificate, without any reasonable or probable cause whatsoever for so doing, in manner and form as in that replication is alledged;" and of this he puts himself upon the country, &c.

Rejoinder, that they did not wrongfully refuse.

J. ADAIR.

And the said Jacob Wood, Charles Rogers, and Charles John Hemans, as to the plea of the said Thomas Worsley by him above pleaded, by way of rejoinder to the said plea by them in reply pleaded to his said plea by him lastly above pleaded in bar, as to the breach of covenant in the said second Count of the said declaration mentioned, and whereof the said Thomas Worsley hath put himself upon the country, they the said Jacob Wood, Charles Rogers, and Charles John Hemans do the like; therefore, as well to try this issue as the said several issues above joined, the sheriffs are commanded that they cause to come here in three weeks

Surrejoinder, and issues.

RESPITE OF JURORS.—POSTEA.

weeks of the Holy Trinity twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because, as well, &c.

Jurors respited.

At which day the jury between the parties of the plea aforesaid was respited here until the morrow of All Souls then next following, unless Sir James Eyre, knight, the king's chief justice of the bench here, assigned by form of the statute, &c. should first come on Friday the eleventh day of July; at the Guildhall of the city of London; and now here, at this day, come the said Jacob Wood, Charles Rogers, and Charles John Hemans, by their said attorney, and the said chief justice, before whom, &c. hath sent here his record in these words:

Postea.

Afterwards, that is to say, upon the day and year, and at the place within mentioned, before the right honourable Sir James Eyre, knight, the chief justice within named, come, as well the within named Jacob Wood, Charles Rogers, and Charles John Hemans, by their attorney within mentioned, as the within named Thomas Worsley, by his attorney also within mentioned; and the jurors of the jury within mentioned, being empaneled according to the form of the statute in that case made and provided, and called, some of them, that is to say, John Wilkinfon, John Peter Hankey, John Everth, and James Baril appear, and on that jury they are sworn; and because the rest of the jurors of that jury have not appeared, others of the bystanders, by the sheriff, at the request of the said Jacob, Charles Rogers, and Charles John Hemans, and by the command of the said chief justice, are newly set down in and added to the pannel, according to the form of the statute: And the jurors so added, that is to say, Joseph Nash, William Bartholomew, George Hughes, John Thomas, William How, John Tayne, Joseph Summers, and James Stockford, together with the jurors aforesaid, being sworn to declare the truth touching the matters within contained as to the issue first within joined between the parties on their oath, say, that Joseph Thomas Lockyer and James Wilder Bream, in the within declaration named, were interested in the lease of the dwelling-house in the first Count of the said declaration mentioned, and were interested in the household goods, printed books, stock, and utensils, wearing apparel, plate, china, glass, and looking-glass plates, liquors, and mathematical and musical instruments, burnt, consumed, lost, and destroyed by fire therein in manner and form as the said Jacob, Charles Rogers, and Charles John Hemans, have within in pleading alledged: And as to the issue secondly within joined between the parties, the jurors aforesaid, on their oath aforesaid, further say, that the minister and church-wardens in the first Count of the said declaration mentioned, did refuse, and have refused, and still do refuse, wrongfully and injuriously, without any reasonable or probable cause whatsoever for so doing, to sign such certificate as in the said first Count is mentioned, in manner and form as the said Jacob, Charles Rogers,

1st Issue.

2d Issue.

Rogers, and Charles John have within in pleading also alledged :
 And as to the issue thirdly within joined between the parties, the
 jurors aforesaid, on their oath aforesaid, further say, that the said
 Joseph Thomas and James Wilder were interested in the lease of
 the said dwelling-house, in the second Count of the within decla-
 ration mentioned, and in the household goods, furniture, books,
 stock, and utensils, wearing apparel, plate, china, glass, and
 looking-glass plates, liquors, and mathematical and musical in-
 struments, burnt, consumed, lost, and destroyed by fire therein,
 in manner and form as the said Jacob, Charles Rogers, and
 Charles John have within in pleading also alledged : And as to the
 issue fourthly within joined between the parties, the jurors aforesaid
 say, that the loss and damage in the first Count of the said
 declaration mentioned did not happen and was not occasioned by
 the fraud or evil practice of the said Joseph Thomas and James
 Wilder, or either of them, by themselves or their servants or
 agents, in that behalf, in manner and form as the said Thomas
 Worsley hath within in pleading also alledged : And as to the issue
 fifthly within joined between the said parties, the jurors aforesaid,
 on their oath aforesaid, further say, that the loss or damage in the said
 second Count of the said declaration mentioned, did not happen and
 was not occasioned by the fraud or evil practice of the said Joseph
 Thomas and James Wilder, or either of them, by themselves or their
 servants or agents, in that behalf, in manner and form as the said
 Thomas Worsley hath in his said plea secondly pleaded in bar as to
 the breach of covenant in the said second Count of the said declara-
 tion alledged : And as to the issue lastly within joined between the
 parties, the jurors aforesaid, on their oath aforesaid, further say,
 that the minister and church-wardens in the said second Count of
 the said declaration mentioned, have wrongfully refused, and still do
 refuse to sign such certificate as is mentioned and required in that
 behalf, in and by the said printed proposals in the said declaration
 and policy of assurance mentioned, without any reasonable cause
 whatsoever for so doing, in manner and form as the said Jacob,
 Charles Rogers, and Charles John Hemans, have within, in their
 replication to the said plea of the said Thomas Worsley by
 him lastly within pleaded in bar as to the breach of covenant
 in the said second Count of the said declaration within men-
 tioned alledged; and they assess the damages of the said Jacob,
 Charles Rogers, and Charles John Hemans, by reason of the
 premises, over and besides their costs and charges by them in and
 about their suit in this behalf expended, to three thousand pounds,
 and for those costs and charges to forty shillings. And because
 the justices here are willing to advise themselves of and upon
 the premises before they give judgment thereon, day is given to
 the parties aforesaid here until in eight days of St. Hilary, to hear
 their judgment thereon, for that the said justices here thereon are
 not yet, &c.; at which day here come the said Jacob Wood,
 Charles Rogers, and Charles John Hemans, by their said attorney;
 and because the said justices here are willing further to advise
 them-

To 3d issue.

To 4th issue;

To 5th issue;

To 6th issue;

3,000l. dama-
ges.Curia advise
vult.

Continuances
by *dies datus*.

themselves of and upon the premises before they give judgment thereon, further day is given to the parties aforesaid here until in fifteen days of Easter, to hear their judgment thereon, for that the said justices here thereon are not yet, &c.; at which day here come the said Jacob Wood, Charles Rogers, and Charles John Hemans, by their said attorney; and because the justices here are willing further to advise themselves of and upon the premises before they give judgment thereon, further day is given to the parties aforesaid here until on the morrow of the Holy Trinity, to hear their judgment thereon, for that the said justices here thereon are not yet, &c.; at which day here come the said Jacob Wood, Charles Rogers, and Charles John Hemans, by their said attorney, and hereupon, the premises being seen and by the justices here fully understood, it is considered that the said Jacob Wood, Charles Rogers, and Charles John Hemans, as assignees as aforesaid, recover against the said Thomas Worsley, their damages aforesaid, to three thousand and two pounds, by the jury aforesaid, in form assessed; and also four hundred and eleven pounds ten shillings to the said Jacob Wood, Charles Rogers, and Charles John Hemans, at their request, for their costs and charges aforesaid, by the court here for increase adjudged, which said damages, in the whole, amount to three thousand four hundred and thirteen pounds ten shillings: And the said Thomas Worsley, in mercy, &c.

Assignment of
error.

Afterwards, to wit, on Saturday next after eight days of St. Hilary, in this same term, before our lord the king at Westminster, comes the said Thomas Worsley, by Edward Wollstoncraft his attorney, and saith, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, in this, to wit, that the declaration aforesaid, and the matters therein contained, and also the replication and other pleadings of the said Jacob Wood, Charles Rogers, and Charles John Hemans, are not sufficient in law for them to have or maintain their said action against him; there is also error in this, that by the record aforesaid it appears, that the judgment in the plea aforesaid given, was so given for the said Jacob Wood, Charles Rogers, and Charles John Hemans against the said Thomas Worsley, whereas, by the law of the land, that judgment ought to have been given for the said Thomas against the said Jacob Wood, Charles Rogers, and Charles John Hemans; and he the said Thomas prays, that for the errors aforesaid, and other errors manifest on the said record and proceedings, the judgment aforesaid may be reversed, annulled, and held entirely for nothing, and that he may be restored to all that he hath lost thereby, and that the said Jacob Wood, Charles Rogers, and Charles John Hemans may rejoin to these errors, &c.

GEO. WOOD.

Joinder in error.

And the said Jacob Wood, Charles Rogers, and Charles John Hemans, by Alexander Annesley their attorney, say, that the said judgment ought not to be reversed, annulled, or held for nothing, by reason of any thing above alledged; because they say, that there

there is not any error either in the record or proceedings aforesaid, or in the declaration or replication, or other pleadings of the said Jacob Wood, Charles Rogers, and Charles John Hemans, or in the giving of the judgment aforesaid; and they pray that the court here may proceed to the examination, as well of the record and proceedings aforesaid, as of the matter above assigned for error, and that the said judgment may be in all things affirmed.

WILLIAM LAMBE.

Judgment in C. B. reversed in B. R. See 6 T. R. 710. reported and decided that the procuring a certificate of the

minister, &c. was a condition and precedent to the right of plaintiff below to recover. See post. 411. *Oldham v. Bewicke*.

LANCASHIRE, to wit. Edward Crumpsty complains of Thomas Staniforth, Joseph Brooks, and Benjamin Heywood, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea of breach of covenant; for that whereas by a certain deed-poll or policy of assurance made the first day of November, in the year of Our Lord 1792, at Liverpool, in the county of Lancaster, sealed with the seals of the said Thomas, Joseph, and Benjamin, and which said Thomas, Joseph, and Benjamin, were three of the parties or acting members of the society of the Liverpool Fire Office hereafter mentioned (but which said deed is lost and destroyed by accident) reciting that the said Edward, by the name of Edward Crumpsty, junior, of Liverpool, grocer, had paid the sum of sixteen shillings and four-pence to the society of the Liverpool Fire Office, and agreed to pay, or cause to be paid to them at their said office, the sum of fourteen shillings on the first day of January 1794, and the like sum of fourteen shillings yearly on the first day of January during the continuance of that policy, for insurance from loss or damage by fire, of stock in trade six hundred and fifty pounds, of household goods fifty pounds, in his dwelling-house and shop, No. 29, in Park-lane, Liverpool, brick, slated, and no hazardous trade on goods allowed therein, that from the date of the said deed-poll, and so long as the said Edward Crumpsty should duly pay, or cause to be paid, the said sum of fourteen shillings at the times and places aforesaid, and the trustees or acting members of the said society for the time being should agree to accept the same, and the stock and fund of the said society should be subject and liable to pay to the said Edward Crumpsty, his executors, administrators, and assigns, all such his damage and loss which he the said Edward Crumpsty should suffer by fire, not exceeding the sum of seven hundred pounds, according to the exact tenor of their printed proposals, dated the first day of January 1777: And the said Edward further says, that the said printed proposals in and by the said deed poll mentioned and referred to are as follow (that is to say), from the Liverpool Fire Office, in Cable-street, for insuring houses and other buildings, goods, wares, and merchandizes, from loss and damage by fire, the great ruin and destruction occasioned by the dreadful consequences of accidents by fire, sufficiently

Declaration against the society of the Liverpool Fire Office, on a policy of assurance of the dwelling-house, stock in trade, and goods of defendant, when the original deed was lost.

Proposals set out.

ently point out the utility of offices of insurance against these calamities, the good effects of such institutions have been frequently experienced, and many who would have been otherwise reduced to indigence and beggary have been supported in affluence, and enjoyed the comfort and happiness of having their property secured from one of the greatest dangers, it is therefore certainly to be wished that institutions of this nature should be increased and extended as much as possible; with this view the proprietors have established this office, and flatter themselves their undertaking will be considered as laudable, and deserve the approbation and support of the public, in order that the insured may possess every public advantage, and be secure in the punctual payment of any losses that may arise, a fund of eighty thousand pounds is appropriated for carrying this scheme into execution, and insurances will be made on the following terms: annual premiums to be paid for insurances since insured, any sum not exceeding one hundred pounds common insurance two shillings *per annum*, hazardous insurances three shillings *per annum*, double hazardous insurances five shillings *per annum*, from two hundred pounds to one thousand pounds common insurance two shillings *per cent. per annum*, hazardous insurance three shillings *per cent. per annum*, double hazardous insurance five shillings *per cent. per annum* from one thousand pound to two thousand pounds; common insurances two shillings and sixpence *per cent. per annum*, hazardous insurance four shillings *per cent. per annum*, double hazardous insurance seven shillings and sixpence *per cent. per annum*; from two thousand pounds to three thousand pounds common insurance two shillings and sixpence *per cent. per annum*, hazardous insurance five shillings *per cent. per annum*, and upon the following conditions:

Article 1st.

Article the first, all policies shall be signed and sealed by three or more justices or acting members, by which policies may be insured, houses and other buildings, household furniture, printed books, goods, wares, merchandizes, and utensils and implements in trade, being the property of the persons insuring, except all manner of writing-books of accounts, bills, bonds, tallies, ready money, jewels, gunpowder, pictures, drawings, and prints not in trade: Article the second, houses, buildings, and goods in trust, and merchandizes on commission (except as aforesaid) may be insured, provided the same are declared in the policy to be in trust or on commission, but not otherwise: Article the third, on bespeaking policies, all persons are to deposit nine shillings and sixpence for the policy, stamp-duty, and mark, and shall pay the premium to the next quarter-day, and from thence for one year more at least, and shall, as long as the managers agree to accept the same, make all future payments annually at the said office, within fifteen days after the day limited by their respective policies, upon forfeiture of the benefit thereof, and no insurance is to take place till the premium be actually paid by the insured, his, her, or their agent or agents: Article the fourth, the several heads of insurance

Article 2d.

Article 3d.

Article 4th.

first, common insurances are buildings covered with slate, tile, or lead,

lead, and built on all sides with brick or stone, and goods or merchandizes therein not hazardous, and where no hazardous trades are carried on; second hazardous insurances are timber or plaister buildings, and goods and merchandizes therein not hazardous, or brick or stone buildings wherein hazardous goods or trades are deposited or carried on, such as apothecaries, chymists, bread and biscuit bakers, coopers, cabinet-makers, carpenters, colourmen, ship and tallow-chandlers, stable-keepers, innholders, sail and rope-makers, malt-houses, hemp, flax, tallow, pitch, tar, and turpentine; third double hazardous insurances are thatched buildings and goods, and merchandizes therein, timber or plaister buildings wherein hazardous goods or trades are deposited or carried on, also ship-carpenters, boat-builders, china, glass, earthen ware, hay, straw, all manner of fodder, and corn unthrashed:

Article the fifth, any number of houses, outhouses, household furniture, printed books, stock in trade, goods in trust or on commission, or wearing apparel or plate therein may be insured in one policy, provided the sum inserted on each is particularly mentioned, and in all insurances the premium is to be paid for one hundred pounds, and if insurances are desired for mills a special agreement may be made for the same, or any larger sums than are specified in the table, or in any other insurance more hazardous than those already described, as sugar-bakers, distillers, or such like, by reason of the nature of trade or goods, narrowness of the place, or other dangerous circumstances: Article the sixth, to prevent frauds, persons insured by this office shall receive no benefit from their policies if the same houses or goods, &c. are insured in any other office, unless such insurance be first specified and allowed by an indorsement on the back of the policy, in which case this office will pay their rateable proportion on any loss or damage, and if any person or persons shall insure his, her, or their houses, goods, wares, or merchandizes, and shall cause the same to be described in the policy, otherwise than as they really are so, as the same be insured at a lower premium than proposed in the table, such insurances shall be of no force, nor the person insuring receive any benefit by such policy in case of any loss or damage: Article the seventh, no loss or damage to be paid on fire happening by any invasion, foreign enemy, or civil commotion, or any military or usurped power whatsoever: Article the eighth, when any person dies, the policy and instrument therein shall continue to the heir, executor, or administrator respectively, to whom the right of the premises insured shall belong, provided before any new payment made such heir, executor, or administrator do procure his or her right to be indorsed on the policy at the said office, or the premium to be paid in the name of the said heir, executor, or administrator: Article the ninth, persons changing their habitations or warehouses may preserve the benefit of their policies, if the nature and circumstance of such policy is not altered, but such insurance will be of no force till such removal or alteration is allowed by indorsement on the policy, assurances on buildings

Article 5th.

Article 6th.

Article 7th.

Article 8th.

Article 9th.

COVENANT ON POLICIES OF

Article 10th.

and goods are delivered on distinct and separate risks, so that the premium on goods is not advanced by reason of any insurance on the buildings wherein the goods are kept, nor the premium on the buildings by reason of any insurance on the goods: Article the tenth, persons insured sustaining any loss or damage by fire, are forthwith to give notice thereof at the office, and as soon as possible afterwards deliver in as particular an account of their loss and damage as the nature of the case will admit of, and make proof of the same by oath or affirmation, according to the form practised in the said office, and by their books of accounts or other proper vouchers as shall be reasonably required, and procure a certificate under the hands of the minister and churchwardens, together with some other reputable inhabitant of the parish not concerned in such loss, importing that they are well acquainted with the character and circumstances of the person or persons insured, and do know or verily believe that he, she, or they, really and by misfortune, without any fraud or evil practice, have sustained by such fire the loss and damage as his, her, or their loss, to the value therein mentioned; but till such affidavit and certificate of such the insureds loss shall be made and produced, the loss money shall not be payable, and if there appear any fraud or false swearing, such sufferers shall be excluded from all benefit by their policies, and in case any difference arise between the office and the insured touching any loss or damage, such difference shall be submitted to the judgment and determination of arbitrators indifferently chosen, whose award in writing shall be conclusive and binding to all parties, and where any loss or damage is settled and adjusted, the insured is to receive immediate satisfaction for the same, without any deduction. *N.B.* In adjusting losses on houses or goods, no wainscot or any sculpture or carved work is to be valued at more than three shillings *per* yard, or plate at more than five shillings and sixpence *per* ounce. To encourage the removal of goods in case of fire, this office will allow the reasonable charges attending the same, and make good the sufferer's loss, whether destroyed, lost, or damaged by such removal: Article the eleventh, no receipts are to be taken for any premiums of insurance, but such as are printed and issued for the said office, and witnessed by one of the clerks or agent of the said office; persons may insure for any number of years more than one, and in such case there will be an abatement of sixpence in the pound *per* annum, on the premiums agreed for, for every year except the first; for instance, in a common insurance of one thousand pounds for seven years, the premium to be paid by the table will be seven pounds, from which sixpence in the pound *per* annum is to be deducted for the last six years, that is, three shillings and sixpence *per* annum, which amounts to one pound one shilling, and reduces the sum to be paid to five pounds nineteen shillings, and in the same proportion for any other sum or number of years, and persons insuring can never be subject to any calls or contributions to make good losses; for the accommodation and
further

Article 11th.

further encouragement of persons insuring in this office, they have provided fire-engines, buckets, ladders, fire-hooks, and every necessary implement for preventing and extinguishing of fires; and there will be kept constantly in pay a number of strong active men to be employed in case of accident, in preventing the spreading of fires and removing goods; the society will also give assistance to cities and great towns, making a large number of insurance in this office, to provide themselves with the same conveniences as by the said deed and proposals more fully appears: And the said Edward further says, that after the making and effecting of the said deed-poll or policy of assurance, and whilst the same remained in force, to wit, on the twelfth day of April, in the year of Our Lord 1793, to wit, at Liverpool aforesaid, in the county aforesaid, divers goods, being the stock in trade and household goods of the said Edward, not hazardous, were deposited in the said dwelling-house and shop in the said deed-poll or policy of insurance mentioned, being brick, slated, and then having no hazardous trade or goods therein of great value, to wit, of the value of seven hundred and eighty pounds; and that afterwards, and whilst the said policy remained in force, to wit, on the day and year aforesaid, at Liverpool aforesaid, in the county aforesaid, the said goods, so being in the said dwelling-house and shop of the said Edward, happened to become, and then and there were on fire, and were then and there damaged, burnt, consumed, and destroyed by fire, which did not happen by any invasion, foreign enemy, or civil commotion, or any military or usurped power whatsoever, that is to say, at Liverpool aforesaid, in the county aforesaid, whereby the said Edward then and there sustained damages to a large amount, to wit, to the amount of the sum by him insured on the said goods so burnt, consumed, and damaged: And the said Edward further says, that the said goods in the said deed or policy mentioned, at the time of the making the said deed, were not, nor at any time since have been insured in any other office, and that the same goods in the said deed or policy mentioned were and are truly described, and not otherwise than as they really were, or so as to cause the same to be insured at a lower premium than proposed in the table in the said proposals mentioned, to wit, at Liverpool aforesaid, in the county aforesaid: And the said Edward further says, that he did forthwith after the said loss, to wit, on the fourteenth day of April, in the year of Our Lord 1793, at Liverpool aforesaid, in the county aforesaid, give notice thereof to the said society in the said office, and also as soon as was conveniently possible afterwards, to wit, on the nineteenth day of July in the year last aforesaid, did there deliver in as particular an account of the said loss and damage as the nature of the case would admit of, and did there make proof of the same, by his oath, according to the form practised in the said office, and by his books of accounts and other proper vouchers in such manner as was required; and did also afterwards, to wit, on the twenty-seventh day of August, in the year last aforesaid, procure

D d 4

and

COVENANT ON POLICIES, &c. PLEA.

and deliver at the said office a certificate under the hands of George Monk, then, and at the time of the said loss, being minister of the parish of Liverpool, and William Jackson and William Gibson, then being churchwardens of the same parish, and also of Richard Walker, Samuel Hemingway, and James Davies, then being some other respectable inhabitants of the same parish, who were not concerned in such loss, importing, that they were well acquainted with the character and circumstances of the said Edward, and that they did verily believe that he by misfortune, without fraud, or evil practice, had sustained by the said fire a loss to the amount of a large sum of money, to wit, the sum of seven hundred and twenty pounds; of all which said premises the said Thomas, Joseph, and Benjamin afterwards, to wit, on the same day and year last aforesaid, at Liverpool aforesaid, in the county aforesaid, had notice: And the said Edward further says, that he hath always been ready and willing to submit to all matters in difference between him and the said office, touching the said loss, to the judgment and determination of arbitrators indifferently chosen between them; and that although he the said Edward hath, in all things, conformed himself to and observed all and singular the stipulations, conditions, and agreements which on his part were to be observed and performed, according to the form and effect of the said deed or policy, and of the said proposals; and although the stock and fund of the said society was sufficient to pay to the said Edward his said loss sustained by the said fire, to wit, at Liverpool aforesaid, in the county aforesaid; yet the said Edward hath not, out of the funds of the said society, or in any other manner, been repaid or reimbursed his said loss, or any part of his said loss, but the same and every part thereof, although often duly demanded, is still wholly in arrear and unpaid to the said Edward, contrary to the form and effect of the said covenant of the said Thomas, Joseph, and Benjamin in that behalf made as aforesaid; and so the said Edward saith, that the said Thomas, Joseph, and Benjamin, although often requested, have not kept with the said Edward their said covenant, but have broken the same, and to keep the same with him hath hitherto wholly refused, and still do refuse, to the damage of the said Edward of one thousand pounds; and therefore he brings his suit, &c.

T. BARROW.

Plea, that plaintiff was not interested in the goods, &c. burnt, and that they were burnt to defraud, &c.

And the said Thomas, Joseph, and Benjamin, by Richard Statham their attorney, come and defend the wrong and injury, when, &c. and as to the supposed breach of covenant in the said declaration mentioned, the said Thomas, Joseph, and Benjamin say, that the said Edward ought not to have or maintain his aforesaid action thereof against them, because they say, that the said Edward was not interested in any goods, being the stock in trade, or household goods of the said Edward, burnt, consumed, lost, and destroyed by fire, in manner and form as the said Edward hath above in the said declaration in that behalf alledged, and of this they the said Thomas, Joseph, and Benjamin put themselves upon the

the country, and the said Edward Crumpsty doth the like: And for further plea in this behalf, as to the said supposed breach of covenant in the said declaration mentioned, they the said Thomas, Joseph, and Benjamin, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say, that the said Edward ought not to have or maintain his aforesaid action thereof against them, because they say, that the supposed loss and damage in the said declaration mentioned, happened and was occasioned by the fraud and evil practice of the said Edward in that behalf, to wit, at Liverpool aforesaid, in the county aforesaid; and this they the said Thomas, Joseph, and Benjamin are ready to verify; wherefore they pray judgment if the said Edward ought to have or maintain his aforesaid action thereof against them; and for further plea in this behalf, as to the said supposed breach of covenant in the said declaration mentioned, they the said Thomas, Joseph, and Benjamin, by leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, say, that the said Edward ought not to have or maintain his aforesaid action thereof against them, because they say, that the said George Monk was not at the said several times in that behalf in the said declaration mentioned, minister of the parish of Liverpool, as in the said declaration above alledged; and of this they put themselves upon the country, &c. and the said Edward doth the like.

SAMUEL HEYWOOD.

And the said Edward, as to the said plea of the said Thomas, Joseph, and Benjamin, by them secondly above pleaded in bar, says, that he ought not by reason of any thing in that plea alledged, to be barred from having and maintaining his aforesaid action thereof against them, because he says, that the said loss and damage in the said declaration mentioned, did not happen, and was not occasioned by the fraud and evil practice of the said Edward in that behalf, as the said Thomas, Joseph, and Benjamin have in their said plea by them secondly above pleaded in bar alledged, and this the said Edward prays may be enquired of by the country, and the said Thomas, Joseph, and Benjamin do the like: And because the issues aforesaid between the said parties above joined ought to be tried by men of the county palatine of Lancaster, within the same county, where the writ of our lord the king doth not run, and not elsewhere; therefore let the tenor of the record of plaint aforesaid be sent to his said majesty's justices there, so that the same justices, by his majesty's writ of that county, do command the sheriff of the same county of Lancaster, that he cause to come before the said justices at their next sessions of assize there before them to be holden, after the said record shall be delivered to them, twelve good and lawful men of the body of the same county of Lancaster, each of whom, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. and when the verification and issues aforesaid shall be there made and tried, that then the

Replication to
2d plea, deny-
ing the fraud.

Mittimus to the
justices at Lan-
caster.

Venire.

COVENANT ON POLICIES OF

the said justices shall send the record of the said plaint, together with every thing that should be done thereon in his said majesty's court there, to our said lord the king at Westminster, at a day which the same justices shall appoint to the said parties to be in the same court, then to hear judgment thereon, &c.

THOMAS BARROW.

Declaration
against an in-
surance office,
for not making
good to plaintiff
the loss which
he had sustained
by reason of two
houses being
burnt, and
which he had
insured at their
office.

LONDON, *ff.* The Governors and Company of the Royal Exchange Assurance of houses and goods from fire, were summoned to answer Henry Robinson, esquire, in a plea, that they keep with him the covenant made between them, according to the force, form, and effect of a certain deed thereof made to him by the said G. and C. &c.; and whereupon the said Henry, by A. B. his attorney, says, that whereas by a certain deed by the said G. and C. called an instrument or policy of assurance, by them made on, &c. at, &c. which said deed, sealed with the common seal of the said G. and C. the said Henry brings into court here, bearing date the same day and year, reciting, that whereas the said Henry had agreed to pay, or cause to be paid unto the treasury of the corporation of the said Royal Exchange Assurance yearly, and every year during the continuance of the said policy, the sum of twelve shillings and sixpence, for the assurance of four brick houses adjoining, situate on the north side of, &c. then in the several tenures of, &c. not exceeding one hundred and twenty-five pounds each house, two of the said tenants being bakers, from loss or damage, or by reason or means of fire during the continuance of the said policy, not exceeding the sum of five hundred pounds in the whole, they the said G. and C. of, &c. did covenant and agree with the said Henry, that so long as the said Henry should well and truly pay, and cause to be paid the said annual sum of twelve shillings and sixpence into the treasury of the said corporation as aforesaid, and the directors of the said company should agree to accept the same, that then the capital stock, estates, and securities of the said company should be subject and liable, and were by the said deed made subject and liable to pay, make good, and satisfy to the said Henry, his executors, administrators, and assigns, all such loss and damage which should or might happen by, or by reason or means of fire to the houses aforesaid, or to such new houses as should from time to time be built or placed in the room thereof, during the continuance of the said policy, not exceeding the sum of five hundred pounds, to be paid to the said Henry, his executors, &c. within sixty days after such loss or damage should happen, if, and in case the said Governor and Company for the time being, their officers, workmen, or assigns, should not, within the said sixty days, at the charges of the said corporation, cause or procure the houses aforesaid, or such new houses to be begun to be rebuilt, repaired, and made good, and within a reasonable time then next after, put into as good condition as the same was or were in at the time when such fire or fires should have happened; provided likewise, and it was

was by the said deed further declared to be the true intent and meaning of the said policy, that the same should not take place and be binding on the said corporation till the premium for the year should be paid, as by the said deed more fully appears: And the said Henry in fact saith, that he the said Henry yearly and every year, during nine years next ensuing the making of the said deed, well and truly paid the said annual sum of twelve shillings and sixpence into the treasury of the corporation aforesaid; and the directors of the said corporation for the time being, yearly, and every year during the said nine years, agreed to accept, and did accept the same of the said Henry, to wit, at, &c.; and the said Henry further says, that in the last year of the said nine years, and during the continuance of the said policy, to wit, on, &c. two houses of the said four houses specified in the said deed, to wit, one house in the said deed mentioned to have been in the tenure of A. B. and one other house in the said deed mentioned to have been in the tenure of the said C. D. happened to be and were set on fire, and much burnt, damaged, and hurt by the said fire, and that the loss and damage which happened to each of the two houses by the said fire, on the same day and year, amounted to a large sum of money, to wit, to the sum of one hundred and twenty-five pounds each house, to wit, at, &c. whereof the said G. and C. then and there had notice; and yet the said G. and C. or their officers, workmen, or assistants, or any of them, did not within sixty days after the said loss and damage so happened to the said two houses by the said fire as aforesaid, cause or procure the said two houses or either of them, or any part thereof to be begun at the charge of the said corporation to be rebuilt, repaired, and made good, nor within a reasonable time then next after, put into as good a condition as the same were in when the said fire happened, nor have the said G. and C. within sixty days after such loss or damage happened to the said two houses as aforesaid, or at any time since paid, made good, and satisfied to the said Henry, or his assigns, the said loss or damage which happened by the said fire to the said two houses as aforesaid, not exceeding one hundred and twenty-five pounds each house, which they ought to have done, according to the form and effect of their said covenant in that behalf made; and thus the said G. and C. although often requested, have not kept their said covenant with the said Henry; whereby the said Henry says that he is damaged to the value of five hundred pounds, and &c. &c.

V. LAWES.

In the Common Pleas.

LONDON, to wit. Calverly Bewick, late of London, esquire, James Haughton Langston, late of Westminster, in the county of Middlesex, esquire, and William Godfrey, late of the same, esquire, were summoned to answer Samuel Oldham and William Cooper, assignees of the estate and effects of William Ingram, a bankrupt, according to the form of the statutes con-

cerning

Declaration, at the suit of assignees of a bankrupt, against the London Sun fire-office, on a policy of assurance on household goods.

COVENANT ON POLICIES OF

cerning bankrupts, made and provided, in a plea of covenant broken, and thereupon the said Samuel and William Cooper, assignees as aforesaid, by James Hore their attorney, complain, for that whereas by a certain deed poll or policy of insurance, made, &c. (set out the policy), as by the said deed and proposals, relation being thereunto had more fully appears: And the said Samuel and William Cooper, assignees as aforesaid, aver, that the said William Ingram, at the time of the making the said policy of insurance, and from thence until the loss and damage hereafter mentioned, was interested in the said insured premises to a large amount, to wit, to the amount of all the money by him ever insured, or caused to be insured thereon, to wit, at London aforesaid, in the parish and ward aforesaid, and that household goods, utensils, and stock to the said amount, continued and remained in the said house until afterwards, to wit, on the twenty-ninth day of October, in the year of Our Lord 1782, the same were burnt, consumed, and destroyed by fire, which did not happen by any invasion, foreign enemy, civil commotion, or any military or usurped power whatsoever, whereby the said William Ingram sustained damage to a large amount, to wit, to the amount of all the money by him thereon insured, to wit, at London aforesaid, in the parish and ward aforesaid; and the said Samuel and William Cooper further say, that the said premises in the said deed or policy mentioned, at the time of the making of the said deed, were not, nor at any time since have been insured in any other office, and that the same premises in the said deed or policy mentioned were and are duly described, and not otherwise than as they really were, or so as to cause the same to be insured at a lower premium than proposed in the table in the said proposals mentioned; and the said Samuel and William Cooper, assignees as aforesaid, further say, that the said William Ingram did forthwith after the said loss, to wit, on the day and year last-mentioned, at London aforesaid, in the parish and ward aforesaid, gave notice thereof to the said society at their said office, and also as soon as possible afterwards, to wit, on the same day and year last-mentioned, did there deliver in as particular an account of his said loss and damage as the nature of the case would admit of, and did then and there make proof of the same by his oath and affidavit in writing, according to the form practised in the said office, and by such other proper vouchers as were reasonably required: And the said Samuel and William C. further say, that the minister of the parish of Portsea, in which the aforesaid dwelling-house of the said William Ingram was situate, long before and at the time of the loss hereinbefore mentioned, dwelt and resided at a distance from and out of the said parish, and was and still is wholly unacquainted with the character and circumstances of the said William Ingram, and wholly unable to make such certificate as by the said policy is required, but that the said William Ingram afterwards, to wit, on the nineteenth day of May, in the year of Our Lord 1783, at London aforesaid, in the parish and ward aforesaid, did procure and did deliver at the
said

saïd-office, a certificate under the hands of William Thomas Le Cogg, Jonathan Hammond, John Chapman, Richard Chamberlain, Thomas Cook, Francis Gibbs, William Bassatt, Thomas Prinatt, Thomas James, Thomas Phipard, Richard Gearing, Henry Hurloch, James Pigenit, Nicholas Dyer, Samuel Parsons, William Bacon, James Parrott, J. B. Castell, and Hugh Rookthen, and at the time of the saïd loss being reputable inhabitants of the saïd parish, who were not concerned in the saïd loss, importing, that they knew the saïd William Ingram, late of the Common-Hard, Portsmouth, linen-draper, and believe that he by misfortune, and without fraud, did, on the twenty-ninth day of October, then last past, sustain a considerable loss and damage, by his dwelling-house, on the Common Hard aforesaid, and the stock and effects therein, or great part thereof, being consumed by fire, of all which premises the saïd Calverly, James Haughton, and William Godfrey afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice from the saïd William Ingram; and the saïd Samuel and William Cooper say, that the saïd William Ingram before he became a bankrupt, and the saïd Samuel and William Cooper, assignees as aforesaid, since the time the saïd William Ingram became a bankrupt, have always been ready and willing to submit all matters in difference between him and them respectively and the saïd office touching the saïd loss, to the arbitration of arbitrators indifferently to be chosen between them; and the saïd Samuel and William Cooper further say, that although the saïd William Ingram before he became a bankrupt, and the saïd Samuel and William Cooper, assignees as aforesaid, since the saïd William Ingram became a bankrupt, have respectively in all things conformed himself and themselves to, and observed all and singular the stipulations, matters, and things which on his or their parts were to be observed and performed to the utmost of their power, according to the form and effect of the saïd deed or policy, and of the saïd proposals; and although the stock and fund of the saïd society always hath been and yet is sufficient to pay the saïd loss sustained by the saïd William Ingram, by reason of the saïd fire, yet the saïd William Ingram before he became a bankrupt, was not, nor have the saïd Samuel and William Cooper, assignees as aforesaid, at any time since the saïd William Ingram became a bankrupt, hitherto out of the stock and funds of the saïd society, or in any other manner been repaid or reimbursed the saïd loss, or any part thereof, but the same and every part thereof is still wholly in arrear and unpaid, contrary to the form and effect of the saïd covenant of the saïd Calverly, James Haughton, and William Godfrey by them in that behalf made as aforesaid; and so the saïd Samuel and William Cooper, assignees as aforesaid, say, that the saïd Calverly, James Haughton, and William Godfrey, although often requested, have not kept with the saïd William Ingram before he became a bankrupt, nor with the saïd Samuel and William Cooper, assignees as aforesaid, since the saïd William Ingram became a bankrupt,

COVENANT.—PLEA.—REPLICATION.

bankrupt, the covenant made between the said William Ingram before he became a bankrupt, and the said Calverly, James Haughton, and William Godfrey in that behalf as aforesaid; but the said Calverly, James Haughton, and William Godfrey have broken the same, and still refuse to keep the same with the said Samuel and William Cooper, assignees as aforesaid, to the damage of the said Samuel and William Cooper, assignees as aforesaid, of fifteen hundred pounds; therefore they bring suit, &c.

Plea, that goods were fraudulently burned, and that bankrupt had no interest in the goods insured.

And the said Calverly, James Haughton, and William Godfrey, by Oliver Farrer, their attorney, come and defend the wrong and injury, when, &c. and say, that the said Samuel and William Cooper ought not to have or maintain their aforesaid action thereof against them, because they say, that the said William Ingram in the said declaration mentioned, on the said twenty-ninth day of October, in the year of Our Lord 1782 aforesaid, wilfully, fraudulently, and maliciously burnt, consumed, and destroyed by fire the said household goods, utensils, and stock in the said declaration mentioned, and thereby wilfully, fraudulently, and maliciously did occasion the said loss and damage in the said declaration mentioned, to wit, at London aforesaid, in the parish and ward aforesaid; and this they are ready to verify: wherefore they pray judgment if the said Samuel and William Cooper ought to have or maintain their aforesaid action thereof against them: And for further plea in this behalf, the said Calverly, James Haughton, and William Godfrey, by leave of the court here to them for this purpose first granted, according to the form of the statute in such case made and provided, say, that the said Samuel and William Cooper ought not to have or maintain their said action against them; because they say, that the said William Ingram in the said declaration mentioned, at the time of the said supposed loss and damage therein mentioned, had not any interest in the said household goods, utensils, and stock above supposed to have been burnt, consumed, and destroyed by fire, as the said Samuel and William Cooper have in their said declaration in that behalf above alledged; and of this the said Calverly, James Haughton, and William Godfrey put themselves upon the country, &c.

G. ROOKE.

Replication, taking issue on the fraud.

And the said Samuel and William Cooper, as to the said plea of the said Calverly, James Haughton, and William Godfrey, by them first above pleaded in bar, say, that by reason of any thing in that plea contained, they ought not to be barred from having their said action thereof maintained against the said Calverly, James Haughton, and William Godfrey; because they say, that the said William Ingram did not wilfully, fraudulently, or maliciously burn, consume, or destroy by fire, or cause to be burnt, consumed, or destroyed by fire the said household goods, utensils, and stock in the said declaration mentioned, or any part thereof, in manner and form as the said Calverly, James Haughton, and

William

Willihm Godfrey have in their said plea above alledged; and this they pray may be enquired of by the country: And as to the plea of the said Calverly, James Haughton, and William Godfrey, by them lastly above pleaded in bar, and whereof the said Calverly, James Haughton, and William Godfrey have put themselves upon the country, they the said Samuel and William Cooper do so likewise; therefore, to try the said issues it is commanded to the sheriffs that they cause to come here on , twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because, as well, &c. the same day is given to to the parties aforesaid there, &c.

It is not alledged in the declaration that a certificate was procured, and the court of C. B. decided this was a *condition precedent*, and where no interest is already vested, nor is to vest but on a condition precedent, performance ought to be averred fully, and with certainty, Co. 10, 11. Ughtred's Case. It was answered to the objection in arrest of judgment, that the objection is waved by defence, and that matter may be sup-

plied by istendment, 1. Salk. 364. Sir T. Raymond 487. 2. Jones 232. 2. Stra. 295. *In quare impedit* plaintiff had not averred that the next term belonged to him, Cro. Jac. 369. nor said how seised in fee in arrest of judgment, because breach not well alledged; court held breach admitted by plea *non est factum*. See 2. H. Bl. 577. n. a. See *ante* 403. same point; and 67. R. 710.

ON INDENTURES OF APPRENTICESHIP*.

DORSETSHIRE, ff. Bernard Banger, by William Banger his father, who is admitted by the court of our lord the king himself to prosecute for the said Bernard, who is within the age of twenty-one years, as the next friend of the said Bernard, complains of Richard Barfoot, being in the custody, &c. of a plea of breach of covenant; for that whereas, by a certain indenture made on, &c. between the aforesaid William Bangor and Bernard Bangor, by the names of, &c. of the one part, and the said Richard, by the name of, &c. on the other part (the counterpart of the said indenture, sealed with the seal of the said defendant, he the said Bernard Banger now brings here into court, the date whereof is the same day and year aforesaid), it was witnessed that the said B. B. at his own free and voluntary will, and by and with the consent of his father, placed and bound himself apprentice for four years, as by the said indenture now brought here into court more fully and at large appears; and the said B. avers, that the said B. by virtue of and under the said indenture, did, after the making the said indenture of the twenty-sixth day of May, A. D. 1752 aforesaid, enter and was received by the said defendant into the service of the said defendant, as such his apprentice in form aforesaid, and into the house of the said defendant, and did stay and continue in the service of the said defendant, as such his apprentice in manner aforesaid, from thence for part of the aforesaid term of four years, to wit, until and upon the twenty-seventh day

Declaration on an apprentice's indenture, brought by the apprentice against his master, for dismissing him from his service against the will of the apprentice, not instructing him in his business, not finding him in cloaths, &c. Plaintiff an infant.

* See Covenant on Articles of Agreement, and *ante* p. 392.

of March, A. D. 1756: And the said plaintiff further saith, that although he the said plaintiff hath always, from the time of the making of the said indenture hitherto well and faithfully done, performed, and fulfilled every thing in the said indenture contained on his part and behalf to be performed and fulfilled; yet protesting that the said Richard hath not done, performed, or fulfilled all things in the said indenture on his part and behalf to be done and performed; in fact the said plaintiff saith, that the said Richard, during the said term of four years in the said indenture mentioned, to wit, on the twenty-seventh day of March, A. D. 1756 aforesaid, at L. aforesaid, without the licence, and against the will of the said plaintiff, dismissed and put away the said plaintiff from and out of the said service of the said defendant, and from thence until the end of the said term of four years, wholly refused to permit him to be in the said service of the said defendant, against the form and effect of the said indenture, and of the aforesaid covenant of the said Richard made in that behalf as aforesaid: And the said plaintiff further says, that the said Richard, during all or any part of the said term of four years, did not teach and instruct, or cause to be well and sufficiently taught and instructed, the said plaintiff in the said trade and business of a soap-boiler and tallow-chandler, after the best way and manner that he could, according to the form and effect of the said indenture, but therein wholly failed and made default, contrary to the form and effect of the aforesaid indenture of the aforesaid covenant of the aforesaid defendant, so made in that behalf as aforesaid: And the said plaintiff further says, that the said Richard did not, during great part of the said four years, from and continually after the said twenty-seventh day of March, in the A. D. 1750 aforesaid, until the end of the said term of four years, or during any part of that time, find or provide for the said plaintiff sufficient, or any meat, drink, washing, or lodging, but during all that time refused so to do, contrary to the form and effect of the said indenture of his said covenant so made in that behalf as aforesaid; and so the said plaintiff saith, that the said defendant (although, &c.) hath not kept with plaintiff his covenants aforesaid. Damages ten pounds.

2d Count.

3d Count.

Plea, that he voluntarily absent-
ed himself.

And the said Richard, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the first breach of covenant above assigned, says, that the said Bernard ought not to have or maintain his aforesaid action thereof against him; because he says, that the said B. on the said twenty-seventh day of March, A. D. 1756 aforesaid, in the aforesaid breach above assigned mentioned, at Lillington aforesaid, voluntarily, and of his own free will did depart and absent himself from the service of the said defendant, and voluntarily of his like own free will continued absent from the service of the said defendant, from thence until the end and term of four years, without this, that the said Richard, without the licence and against the will of the said plaintiff, dismissed and put away the said plaintiff from and out of the said service of the said defendant, as the said plain-
tiff

tiff hath above in his said deed in that behalf alledged; and this he is ready to verify: wherefore he prays judgment if the said B. ought to have or maintain his aforesaid action thereof against him, &c.: And the said Richard, as to the said breach of covenant secondly above assigned, says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him; because he says, that the said defendant did, from the time of the making of the said indenture, until the twenty-seventh day of March 1756, at Lillington aforesaid, teach and instruct, and cause to be well and sufficiently taught and instructed, the said plaintiff in the said trade and business of a soap-boiler and tallow-chandler, after the best way and manner that he could, and that he the said plaintiff, on the twenty-seventh day of March, A. D. 1756 aforesaid, of his own free will and accord, at Lillington aforesaid, went away, departed, and absented himself from the house and service of him the said defendant, and voluntarily, of his own free will, kept and continued to absent himself from the service of the said defendant (a), from thence until the end of the said term of four years; and this he is also ready to verify: wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.: And as to the said breach of covenant thirdly above assigned, (*actio non*); because he says, that the said plaintiff, on the said twenty-seventh day of March, A. D. 1756 aforesaid, did voluntarily, and of his own free will, depart and absent himself from the service of the said defendant, and did freely and voluntarily continue to absent himself from the service of the said defendant for the residue of the said term of four years, and therefore the said defendant could not at any time after the said twenty-seventh day of March, A. D. 1756 aforesaid, during the said term of four years, find or provide for the said plaintiff any meat, drink, washing, or lodging; and this, &c.; wherefore, &c. if, &c.

(a) This I think should be in, though Mr. Warren left it out; but that might be occasioned by the nature of the case, which was, the apprentice would have

returned, but having been guilty of felony, defendant refused to receive him.

J. MORGAN.

MIDDLESEX, to wit. Jane Goadley complains of Robert Hall, being, &c. of a plea of breach of covenant; for that where- as by certain indenture of apprenticeship made on the twelfth day of September, A. D. 1783, to wit, at Westminster, in the county of Middlesex aforesaid (one part of which indenture, sealed with the seal of the said Robert, she the said Jane now brings here into court, the date whereof is the day and year aforesaid), it is witnessed (amongst other things) that Mary Hall, daughter of the said Robert (by the name and addition of Robert Hall, of the parish of Islington, Middlesex), did put herself apprentice to the said Jane (by the name and addition of Jane Goadley, of the city of Bath, Somersetshire), to learn her art, also to assist in the family business, such as washing, ironing, &c. and with her

Covenant on an indenture of apprenticeship against the father, for non-performance of the daughter's covenant.

(FATHER OF FEMALE) APPRENTICE *v.* MISTRESS.

(after the manner of an apprentice) to serve from the date thereof unto the full end and term of seven years from thence next following, to be fully complete and ended, during which term the said apprentice her mistress faithfully should serve, her secrets keep, her lawful commands every where gladly do; that she should not haunt taverns or playhouses, nor absent herself from her said mistress's service day or night unlawfully, but in all things as a faithful apprentice should behave herself towards her said mistress, and all hers, during the said term; and for the true performance of all and every the said covenants and agreements, either of the said parties did become bound unto the other by the said indenture, as by the said indenture (relation being thereunto had) will (amongst other things) more fully and at large appear; by virtue of which said indenture the said Mary Hall afterwards, to wit, on the said twelfth day of September, in the year aforesaid, at Westminster, in the county of Middlesex aforesaid, entered, and was then and there received into the service of the said Jane as her apprentice, and remained and continued in such service, under and by virtue of the said indenture, for a long space of time, to wit, from the day and year last aforesaid, until and upon the day of , in the year of Our Lord 17 , to wit, at Westminster, in the county of Middlesex aforesaid; and although she the said Jane hath always, from the time of the making the said indenture hitherto, well and truly performed, fulfilled, and kept the same in all things therein mentioned and contained on her part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning of the said indenture, to wit, at Westminster, in the county of Middlesex aforesaid: Yet, protesting that the said Robert hath not performed, fulfilled, or kept any thing in the said indenture mentioned and contained on his part and behalf to be performed, fulfilled, and kept, according to the tenor and effect, true intent and meaning thereof; the said Jane in fact saith, that the said Mary Hall did not nor would faithfully serve the said Jane, according to the tenor and effect, true intent and meaning of the said indenture; but on the contrary thereof, she the said Mary Hall did, during the said term, to wit, on the said day of , in the year last aforesaid, at Westminster, in the county of Middlesex aforesaid, unlawfully absent herself, and hath from thence hitherto remained and continued unlawfully absent from the service of the said Jane, contrary to the tenor and effect of the said indenture, and of the covenants in that behalf made as aforesaid: And so the said Jane in fact saith, that the said Robert (although often requested), hath not kept the said covenants so by him made with the said Jane, in manner and form aforesaid, but hath broken the same, and to keep the same with the said Jane hath hitherto wholly refused, and still refuses so to do, to the damage of the said Jane of pounds; and therefore she brings her suit, &c. Pledges, &c.

Drawn by MR. TIDD.

Vide Branch v. Emington, Doug. 500. and Whitby v. Loftus, B. R. M. 10. G. 1. 8. Mod. 190.

Trinity Term, 30. Geo. 3.

LANCASHIRE, to wit. Barton Shuttleworth, clerk, complains of James Hargreaves, being, &c. of a plea of covenant broken; for that whereas by certain articles of agreement indentured, made, concluded, and agreed upon the sixteenth day of October, in the year of Our Lord 1789, at Rochdale, in the county of Lancaster aforesaid, between the said B. S. the now plaintiff, and B. S. his son, of the one part, and the said J. H. of the other part, and sealed with the respective seals of the said B. S. the now plaintiff, and B. S. the son, and the said James, and bearing date the same day and year aforesaid (which said articles of agreement now remain in the custody and possession of the said James, and therefore the said B. S. the now plaintiff, cannot bring the same here into court), the said B. S. the son, of his own free will, and with the consent of the said B. S. his father, the now plaintiff, did put, place, and bind himself apprentice to the said J. H. to serve him in his art, mystery, or business of a surgeon, apothecary, and midwife, from the day of the date of the said articles, for and during the full end and term of four years from thence next ensuing, and that he the said B. S. the son, should and would, during the said term, keep the secrets of his said master, and should not, nor would not, during the said term, embezzle or misspend any of his said master's money or goods, nor absent himself from his service at any time without his consent, but in all respects behave himself as a good and faithful apprentice ought to do; and the said J. H. in consideration of such apprenticeship, and also in consideration of fifty-two pounds ten shillings of lawful money of Great Britain to him in hand paid, by the said B. S. the father, on or before the sealing and delivery of the said articles, the receipt whereof he did thereby acknowledge, did for himself, his heirs, executors, and administrators, that he the said J. H. should and would, at all times during the term aforesaid, teach and instruct, or cause and procure to be taught and instructed in the art, mystery, or business of a surgeon, apothecary, and midwife, and in all things incident and belonging thereto, in such manner as he the said J. H. then, or at any time during the said term, should use, practise, or deal in the same; and also that he the said J. H. should and would, during the said term, find and provide for the said B. S. the son, good and sufficient meat, drink, and lodging, fit for such an apprentice (as by the said articles of agreement, relation being thereunto had may more fully appear): And the said B. S. the father, in fact says, that the said B. S. the son, by virtue of the said articles, afterwards, to wit, on the seventeenth day of October, in the year aforesaid, at R. aforesaid, in the county aforesaid, entered and was received into the service of the said James, to serve him the said James as such apprentice as aforesaid, during the said term of four years, in the said articles mentioned, and staid and continued in the said service of the said James, as such apprentice as aforesaid, for and during part of the said term in the said indenture mentioned, to wit, until and upon the first day of April, in the

Declaration in B. R. in covenant on an indenture of apprenticeship, by the father of the apprentice against his master, for not teaching him the business, and dismissing him.

States that the indenture of apprentice is in defendant's custody, therefore plaintiff cannot produce it in court.

The son entered into defendant's service.

1st Breach, did not instruct the apprentice.

2d Breach, turned the apprentice away, and did not instruct or provide him with board and lodging.

Condition.

year of Our Lord 1790, to wit, at, R. aforesaid: Yet the said James did not, during the said time that the said B. S. the son, so was and continued in his said service as such apprentice as aforesaid, teach or instruct the said B. S. the son, or cause or procure him to be taught or instructed in the art, mystery, or business of a surgeon, apothecary, and midwife, or either of them, or in all or any of the things incident or belonging thereto, in such manner as he the said James did, during that time use, practise, and deal in the same, or in any other manner whatsoever; but wholly omitted and refused so to do, and therein wholly failed and made default, contrary to the form and effect of the said articles, &c. of the said covenant of the said James, so by him made in that behalf as aforesaid, and in manifest breach thereof: And the said B. S. the father, further in fact says, that although the said B. S. the son, hath always, during the said term, been desirous of remaining and continuing in the said service of the said James, as such apprentice as aforesaid, for and during, and until the end and expiration of the said term of four years in the said articles mentioned, to wit, at R. aforesaid: Yet the said James afterwards, and long before the expiration of the said term of four years in the said articles mentioned, to wit, on the said first day of April, in the year last aforesaid, at R. aforesaid, without the licence or consent, and against the will of the said B. S. the son, discharged and dismissed the said B. S. the son from and out of the service of him the said James, and kept and continued him so dismissed and discharged out of his said service from thence hitherto, and during all that time wholly refused to permit or suffer the said B. S. the son, to remain, continue, or be in his service as such apprentice as aforesaid, and hath not, during any part of the said last-mentioned time, taught or instructed the said B. S. the son, or caused and procured him to be taught and instructed in the said art, mystery, and business of a surgeon, apothecary, and midwife, or any part thereof, or in all or any of the things incident or belonging thereto, in manner as he the said James uses, practises, and deals in the same, or in any other manner; neither hath the said James, during any part of the said last-mentioned time, found or provided for the said B. S. the son, good and sufficient meat, drink, and lodging, fit for such an apprentice, or any other meat, drink, or lodging, or any part thereof, but hath altogether omitted and refused so to do, and hath therein wholly failed and made default, contrary to the form and effect of the said articles of the said James so by him made in that behalf as aforesaid, and in manifest breach thereof; and so the said B. S. the father says, that the said James (although often thereto requested), hath not kept with him the said B. S. the father, the aforesaid covenant made with him the said James as aforesaid, but hath broken the same; and to keep the same with the said B. S. the father, the said James hath hitherto altogether refused, and still refuses, to the damage of the said B. S. the father, of one hundred pounds; and therefore he brings his suit, &c. Pledges, &c.

And the said James, by Ralph Allen his attorney, comes and defends the wrong and injury, when, &c.; and as to the breach of covenant first above assigned, says, that the said B. S. the father ought not to have or maintain his aforesaid action thereof against him the said James, because he the said James saith, that he the said James did, during the said time that he the said B. S. the son was, and continued in his said service as such an apprentice as aforesaid, teach and instruct the said B. S. the son, and cause and procure him to be taught and instructed in the art, mystery, or business of a surgeon, apothecary, and midwife, and each of them, and in all things incident and belonging thereto, in such manner as he the said James did during that time use, practise, and deal in the same, according to the form and effect of the said articles, and of the said covenant of the said James so by him made in that behalf as aforesaid, to wit, at R. aforesaid; and of this he the said James puts himself upon the country, and the said B. S. the now plaintiff doth the like: And as to so much breach of the covenant secondly aforesaid, as relates to the dismissing and discharging the said B. S. the son from and out of the service of the said James, and keeping and continuing him so dismissed and discharged for the time in the said breach in that behalf mentioned, and refusing to permit or suffer the said B. S. the son to remain, continue, or be in the service of the said James as such apprentice as aforesaid, during the time in the said breach in that behalf aforesaid; the said James saith, that the said B. S. the father ought not to have or maintain his aforesaid action thereof against him the said James, because he the said James saith, that he did not dismiss or discharge the said B. S. the son from or out of the service of the said James, or refuse to permit or suffer the said B. S. the son to remain, continue, or be in the service of the said James as such apprentice as aforesaid, in manner and form as the said B. S. the father hath in his said breach secondly above assigned alledged; and of this he the said James putteth himself upon the country, and the said B. S. the now plaintiff doth the like: And as to the residue of the said breach of covenant secondly above assigned, the said James says, that the said B. S. the father ought not to have or maintain his said action thereof against him, because he saith, that the said B. S. the son, on the first day of April, in the year of Our Lord 1790, at R. aforesaid in the said county, without the licence, and against the will of the said James, voluntarily and wilfully departed and absented himself from his said service, and remained and continued absent therefrom without the licence and against the will of the said James, from thence continually hitherto, contrary to the form and effect of the said indenture; by reason whereof the said James could not, during that time, or any part thereof, teach or instruct the said B. S. the son, or cause or procure him to be taught or instructed in the art, mystery, and business of a surgeon, apothecary, and midwife, or any part thereof, or in all or any of the things incident or belonging thereto, in manner as he the said

Plea 1st, as to the first breach, that he did teach him, and issue.

Second, to the charge for dismissing him in 2d breach, that he did not, and issue.

As to the residue of that breach, that he ran away, and concluding with a verification.

PLEA IN EXCUSE OF PERFORMANCE.

Plea to 2d
breach, that
plaintiff and de-
fendant agreed
that the latter
should procure
another assist-
ant, plaintiff's
son should leave
defendant.

James used, practised, and dealt in the same, or in any other manner, or find or provide for the said B. S. the son, meat, drink, or lodging, or any part thereof; and this he the said James is ready to verify: wherefore he prays judgment if the said B. S. the father ought to have or maintain his said action thereof against him: And for further plea in this behalf as to the said breach of covenant secondly above assigned, by leave of the court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, the said James says, that the said B. S. the father ought not to have or maintain his said action thereof against him, because he says, that after the making of the said articles, and before the dismissing and discharging of the said B. S. the son from and out of the service of him the said James, to wit, on the first day of April, in the year of Our Lord 1790, at R. aforesaid, in the said county, it was agreed by and between the said B. S. the father and the said James (amongst other things) in manner following, that is to say, that the said James should, with all convenient speed, procure another person to serve him in his said art, mystery, and business, and that when the said James should have procured such person, the said B. S. the son should leave the service of him the said James, and be discharged from his said apprenticeship; and that he the said James should not, after the procuring of such person, be obliged to teach or instruct the said B. S. the son, or cause and procure him to be taught and instructed in the said art, mystery, and business of a surgeon, apothecary, and midwife, or any part thereof, or in any thing incident or belonging thereto, or to find or provide for the said B. S. the son, any meat, drink, or lodging, and that the said B. S. the father should not nor would bring any action against the said James for omitting and refusing so to do: and the said James avers, that the said agreement being so made as aforesaid, he the said J. in consideration and performance thereof afterwards, to wit, on the day and year last aforesaid, at R. aforesaid, in the said county, did procure another person to serve him in said art, mystery, and business; wherefore the said James then and there dismissed and discharged the said B. S. the son from and out of the service of him the said J. and kept and continued him so dismissed and discharged out of his said service, from thence hitherto, and during all that time wholly refused to permit the said B. S. the son to remain, continue, or be in his service, as such apprentice as aforesaid, and did not, during any part of the said last-mentioned time, instruct the said B. S. the son, or cause or procure him to be taught or instructed in the said art, mystery, or business of a surgeon, apothecary, and midwife, or any part thereof, or in all or any of the things incident or belonging thereto, nor find nor provide for the said B. S. the son, any meat, drink, or lodging, or any part thereof, but wholly omitted and refused so to do, as it was lawful for him to do on that occasion; and this he is ready to verify: wherefore he prays judgment if the said B. S. the father ought to have or main-
tain

tain his said action against him: And for further plea in this behalf as to the said breach of covenant secondly above assigned, by leave of the court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, the said J. says, that the said B. S. the father ought not to have or maintain his aforesaid action against him the said James, because he says, that after the making of the said articles, and before the dismissing and discharging the said B. S. the son from and out of the service of him the said James, to wit, on the first day of January, in the year of Our Lord 1790, and on divers other days and times between that day and the dismissing and discharging the said B. S. the son from and out of the service of him the said James, to wit, at R. aforesaid, in the said county, the said B. S. the son misbehaved himself as such apprentice as aforesaid, and then and there wholly refused to obey the lawful commands and orders of him the said James, and then and there beat, bruised, wounded, and ill-treated the said James, so that his life was thereby then and there in great danger, and then and there behaved and conducted himself so improperly, riotously, and outrageously, that he the said James could not keep the said B. S. the son as such apprentice as aforesaid; wherefore the said James, on the first day of April, in the year of Our Lord 1790, at R. aforesaid, in the said county, dismissed and discharged the said B. S. from and out of the service of him the said J. and kept and continued him so dismissed and discharged out of his said service from thence hitherto and during all that time, wholly refused to permit or suffer the said B. S. the son to remain, continue, or be in his service as such apprentice as aforesaid, and did not, during any part of the said last-mentioned time, teach or instruct the said B. S. the son, or cause or procure him to be taught and instructed in the said art, mystery, and business of a surgeon, apothecary, and midwife, or any part thereof, or in all or any of the things incident or belonging thereto, nor find or procure for the said B. S. the son any meat, drink, or lodging, or any part thereof, but wholly omitted and refused so to do, as it was lawful for him to do on that occasion; and this he is ready to verify: wherefore he prays judgment if the said B. S. ought to have or maintain his aforesaid action against him.

Another plea to second breach, that the apprentice misbehaved himself to his said master, as that defendant could not keep him.

SAMUEL HEYWOOD.

And the said B. S. the now plaintiff, as to the said plea of the said James by him above pleaded in bar, as to the said residue of the said breach of covenant secondly above assigned, says, that he the said B. ought not, by reason of any thing in that plea alleged, to be precluded from having and maintaining his aforesaid action thereof against the said James, because he says, that the said James, of his own wrong, and without any such cause as is by him in the said plea in that behalf alleged, omitted and refused to teach or instruct the said B. S. the son, or to cause or procure him to be taught or instructed in the said art, mystery, or business of a surgeon, apothecary, or midwife, or any part thereof, or in all or

Replication *de injuriato* the third plea, and issue.

COVENANT.—REPLICATION.

Replication to
4th plea, during
the agreement,
and issue.

Replication to
5th plea, *de in-
juria*, and issue.

any of the things incident or belonging thereto, in manner as he the said James then used, practised, and dealt in the same, or in any other manner, and to find or provide for the said B. S. the son, meat, drink, or lodging, or any part thereof, in manner and form as the said B. S. the plaintiff hath above thereof complained against him the said James; and this he the said B. S. the plaintiff prays may be enquired of by the country, and the said James doth the like: And the said B. S. the plaintiff, as to the said plea of the said James by him secondly above pleaded in bar, as to the said breach of covenant secondly above assigned, says, that the said B. S. ought not, by reason of any thing in that plea mentioned, to be barred from having and maintaining his said action thereof against the said James, because he says, that it was not agreed by and between the said B. S. the father and the said James, in manner and form as the said James hath above in his said last-mentioned plea in that behalf alledged; and this he the said B. S. the plaintiff prays may be enquired of by the country; and the said James doth the like: And the said B. S. the plaintiff, as to the said plea of the said James lastly above pleaded in bar to the said breach of covenant secondly above assigned, says, that the said B. S. ought not, by reason of any thing in that plea alledged, to be barred from having and maintaining his aforesaid action against him the said James, because he says, that the said James, of his own wrong, and without any such cause as is by him in his said last-mentioned plea in that behalf alledged, dismissed, and discharged the said B. S. the son from and out of the service of the said James, and kept and continued him so dismissed and discharged out of the service of him the said James from thence hitherto and during all that time, wholly refused to permit or suffer the said B. S. the son to remain, continue, or be in his service as such apprentice as aforesaid, and did not, during any part of that time, teach or instruct the said B. S. the son, or cause or procure him to be taught or instructed in the said art, mystery, or business of a surgeon, apothecary, or midwife, or any part thereof, or in all or any of the things incident or belonging thereto, nor find or provide for the said B. S. the son, any meat, drink, or lodging, or any part thereof, but wholly omitted and refused so to do, in manner and form as the said B. S. the plaintiff hath above thereof complained against him the said James; and this he the said B. S. prays may be enquired of by the country; and the said James doth the like.

T. BARROW.

I have taken issue on each of the defendant's pleas, but I am of opinion that the last, though true in fact, is bad in point of law; for I do not think that the express covenant of the defendant, to instruct the apprentice in his profession, and to find him with board and lodging during the term, can be discharged by the mere misbehaviour of the latter to the former, as stated in that plea; how-

ever, it would have been nugatory to have demurred to it, as the defendant might have gone to trial upon the good pleas without it or with it, by amending, but it is proper to observe, that if the defendant's evidence at the trial goes only to support the faulty plea, I think it bad in arrest of judgment, though he should obtain a verdict upon it.

(INFANT) APPRENTICE v. MASTER.—DECLARATION. 425

CITY OF BRISTOL, *ff.* William Organ, late of the city of Bristol, fishmonger and cork-cutter, was summoned to answer John Bayley of a plea of covenant broken; and thereupon the said J. B. by J. C. who is admitted by the court to prosecute for the said J. B. who is within the age of twenty-one years, as the next friend of the said J. B. complains: for that whereas on the seventh of October 1775, at the city of Bristol, by a certain indenture, &c. &c. as by the said indenture, relation being had thereto, more fully and at large appears: And the said J. B. says, that after making the said indenture, to wit, on the day and year aforesaid, at the city of B. aforesaid, he the said J. B. entered into the service of the said William and Ann, to serve after the manner of an apprentice, according to the form and effect of the said indenture; and although the said J. B. always, from the time of making the said indenture, hitherto hath kept, performed, and done all things in the said indenture contained on his part and behalf to be done, performed, and kept; yet, protesting that the said William hath not done any thing in the said indenture contained on his part and behalf to be done and performed: In fact the said J. B. saith, that the said W. hath not, since the day of the date of the said indenture, diligently taught, instructed, and informed the said J. B. or caused him to be informed by others in the aforesaid art of a fishmonger, and the aforesaid art of a cork-cutter, or either of them, but hath wholly neglected and refused so to do, contrary to the form and effect of the said indenture, and of the covenant of the said William in that behalf made as aforesaid: And the said J. B. further saith, that the said William hath not, since the time of making the said indenture, found him the said J. B. good and sufficient meat, drink, lodging, and other necessities (apparel and washing excepted) or any of them, but hath wholly neglected and refused so to do, contrary to the form and effect of the said indenture, and of the covenant of the said William in that behalf made as aforesaid; and so the said J. B. says, that the said William (although often requested) hath not kept with the said J. B. his covenant in manner aforesaid made, but hath broken the same, and to keep the same with the said J. B. hath hitherto wholly refused, to the damage; and therefore, &c.

Declaration by an infant apprentice against his master, for not instructing him in his trade, and providing him with meat, drink, &c.

And the defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c.; and as to the said breach of covenant first above assigned, says, that the said J. B. the plaintiff, (*actio non*); but he saith, that the said William hath, since the day of the date of the said indenture, diligently taught, instructed, and informed the said J. B. the plaintiff, in the aforesaid art of a fishmonger, and in the aforesaid art of a cork-cutter, according to the form and effect of the said indenture, and of the covenant of the said William in that behalf made as aforesaid; and of this, &c. defendant, for further plea in bar as to the said breach of covenant defendant's service, and that whilst he remained in his service, defendant taught and instructed him.

Plea 1st, that defendant taught plaintiff according to the agreement.

Second, that plaintiff absented himself from instructed him.

first

3d, that defendant did find plaintiff meat and drink.

4th, that plaintiff absented himself from defendant's service, and that defendant, while, &c. did find, &c.

first above assigned, by leave, &c.; but he says, that after the making of the aforesaid indenture, to wit, on the seventh of October 1775, the said J. B. the plaintiff, entered into the service and employment of the said William in the aforesaid arts of a fishmonger and cork-cutter, and attended the said William for instruction therein for a long space of time, to wit, for the space of then following; and that afterwards, on A. D. and from thenceforth until the day of suing out the original writ of the said J. B. the plaintiff at B. aforesaid, he the said J. B. the plaintiff absented himself from the service and employment aforesaid of the aforesaid William, and neglected to attend the said William in the arts aforesaid: And the said William further says, that from the time when the said J. B. the plaintiff, first entered into the service and employment of the said William in the arts above-mentioned, until the time of his absenting himself therefrom, and neglecting to attend the said William therein as aforesaid, he the said William did + teach, instruct, and inform the said J. B. the plaintiff, in the aforesaid art of a fishmonger, and in the aforesaid art of a cork-cutter, according to the form and effect of the said indenture of the covenant of the said William in that behalf made as aforesaid verification; wherefore he prays judgment if, &c.; and defendant, as to the said breach of covenant lastly above assigned, says, &c. but he says, that the said William did find the said J. B. the plaintiff, good and sufficient meat, drink, lodging, and other necessities, according to the form and effect of the said indenture, and of the covenant of the said William in that behalf made as aforesaid; and of this, &c.: and for further plea in bar as to the said breach of covenant lastly above assigned, by leave, &c. [the same as first part of second plea to this +], find him the said J. B. the plaintiff, &c. the same as the third plea,

These are, I think, the best pleas which the case will admit of; but I am inclined to think that the plaintiff will obtain a verdict for some small damages.

This is a most abominable action, but I fear the plaintiff must have a verdict on all the pleas, because the defendant has

not taught plaintiff, as alledged in first and third pleas, nor did the plaintiff absent himself, as alledged in third and fourth pleas; therefore I think it advisable either to offer terms of accommodation, or suffer judgment by default, rather than incur the costs of the special pleas, and a trial thereon.

NASH GROSE.

Replication, &c. to two pleas, protesting that defendant did not keep, &c.

Plaintiff avers that he did not absent himself, &c.

And the said John the plaintiff, as to the said plea of the said William by him secondly above pleaded in bar, says, (*precludi non*), but protesting that the said William did teach, instruct, or inform the said J. B. the plaintiff, in the aforesaid art of a fishmonger, and in the aforesaid art of a cork-cutter, in manner and form as in and by the said second plea is above alledged; nevertheless, for replication in this behalf the said S. the plaintiff says, that he the said John the plaintiff did not absent himself from the service and employment aforesaid of the said William, or neglect to attend the said William in the arts aforesaid, in manner and form

as

as the said William hath in and by that plea above alledged; and this the said John prays, &c. : And as to the said plea of the said William by him lastly above pleaded in bar, the said John the plaintiff says, (*affio non*); but protesting that he the said William did not find him the said John the plaintiff, good and sufficient meat, drink, lodging, and other necessities, in manner and form as in and by the said last plea in that behalf is above supposed; nevertheless, for replication in this behalf the said John the plaintiff says, that he the said John the plaintiff did not absent himself from the service and employment of the said William, in manner and form as the said William hath in and by that plea above alledged; and this, &c.

To plea, protesting that plaintiff did not find sufficient meat and drink.

Plaintiff avers that he did not absent himself.

THO. WALKER.

And the said William, as to the said plea of the said John by him above pleaded, in reply to the said plea of the said William by him secondly above pleaded in bar, saith, that he doth the like; And the said William, as to the said John the plaintiff by him above pleaded, in reply to the said plea of the said William by him lastly above pleaded in bar, saith, that he doth the like.

The plaintiff's replications conclude to the country, and the defendant hath only to take issue on the replications, by giving the *similiter* to each; but as I said before, and as Mr. Serjeant Grose hath

also said, I think that the plaintiff will be entitled to a verdict in his favour. It cannot, therefore, be left to the defendant's own discretion, whether he will join issue or suffer judgment by default.

LONDON, to wit. John Wood against John Bell, in a plea of covenant broken: for that whereas by a certain indenture made on the fourteenth day of September A. D. 1780, to wit, at London aforesaid, in the parish of St. Mary-le-bow, in the ward of Cheap, and which said indenture, sealed with the seal of the said defendant, the said plaintiff now brings into court, the date whereof is the same day and year aforesaid: It is witnessed, that the said plaintiff, by the name and description of John Wood, of Ensham, in Oxfordshire, with the consent of his father William Wood, put himself apprentice to the said defendant by the name and description of Captain John Bell, of Wapping, to learn his art with him after the manner of an apprentice, to serve from the date of the said indenture unto the full end and term of four years from thence next following, to be fully complete and ended; during which term the said apprentice his said master faithfully shall serve, his secrets keep, his lawful commands every where gladly do; he should do no damage to his said master, nor see to be done of others, but that he to his power should let or forthwith give warning to his said master of the same; he should not waste the goods of his said master, nor lend them unlawfully to any; he should not commit fornication, nor contract matrimony within the said term; he should not play at cards, dice, tables, or any other unlawful games, whereby his said master might have any loss with his own goods or others during the said term, without licence

Declaration in covenant by apprentice against his master, for discharging him before the expiration of his term, not finding, &c. nor paying wages.

1st breach, discharged plaintiff.

2d breach, did not find him in board and lodging.

cence of his said master; he should neither buy nor sell; he should not haunt taverns or play-houses, nor absent himself from his said master's service day nor night unlawfully, but in all things as a faithful apprentice he should behave himself towards his said master and all his during the said term: And the said Captain John Bell, his said apprentice in the same art of a mariner, which he used by the best means that he could, should teach and instruct, or cause to be taught and instructed, finding unto his said apprentice sufficient meat, drink, and lodging, during the said term, and also pay him five pounds for the first year, six pounds for the second year, seven pounds for the third year, and ten pounds for the fourth year, and for the true performance of all and every the said agreements, either of the said parties did bind himself unto the other by the said indenture, as by the said indenture, relation being thereunto had may more fully and at large appear: And the said plaintiff in fact says, that the said plaintiff, by virtue of the said indenture afterwards, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, entered and was received into the service of the said defendant, to serve the said defendant as such apprentice in the art aforesaid, during the said term in the said indenture mentioned, and that he the said plaintiff staid and continued in the said service of the said defendant from thence for and during part of the said term of four years in the said indenture mentioned, to wit, until the first day of April A. D. 1782, to wit, at London, &c. aforesaid, and was then and there ready and willing, and offered to be and continue in the said defendant's service, and to serve him as an apprentice in the art aforesaid from thence until the end and expiration of the said term of four years in the said indenture mentioned, and to perform and fulfil every thing in the said indenture contained on his part and behalf as such apprentice to be done, performed, and fulfilled: Yet the said plaintiff in fact says, that the said defendant afterwards, and during the continuance of the said term, to wit, on the same day and year last aforesaid, at London, &c. aforesaid, without the licence, and against the will of the said plaintiff, discharged the said plaintiff from and out of the service of him the said defendant, and kept and continued the said plaintiff so as aforesaid discharged from and out of the service of him the said defendant from thence until the end and expiration of the said term in the said indenture mentioned, and during all that time refused to permit and suffer the said plaintiff to be and continue in the service of him the said defendant, and to teach and instruct, or cause to be taught and instructed the said plaintiff in the art of a mariner, by the best means that he the said defendant could, contrary to the form and effect of the said indenture, and of the said covenant of the said defendant by him made as aforesaid: And the said John Wood further in fact says, that the said defendant did not find for the said plaintiff, his said apprentice, sufficient meat, drink, or lodging during the said term of four years in the said indenture men-

mentioned, as he ought to have done according to the indenture, but during a great part of the said term, to wit, from the said first day of April A. D. 1782 aforesaid, until the end and expiration of the said term wholly neglected and refused so to do, and therein wholly failed and made default, contrary to the form and effect of the said indenture, and of the said covenant of the said defendant so by him made in this behalf as aforesaid: And the said plaintiff further in fact says, that the said defendant hath not at any time from the making of the said indenture, hitherto paid, or caused to be paid to the said plaintiff the said five pounds for the first year, six pounds for the second year, seven pounds for the third year, and ten pounds for the fourth year of the said term of four years in the said indenture mentioned, or any or either of those sums of money, or any part thereof; but the said several and respective sums of money above-mentioned are and each of them is still in arrear and unpaid from the said defendant to the said plaintiff, contrary to the form and effect of the said indenture, and of the covenant of the said defendant so by him made in this behalf as aforesaid; and so the said plaintiff says, that the said defendant, although often requested, hath not kept with the said plaintiff the covenants made between them, but hath broken the same, and to keep the same hath hitherto wholly refused, and still doth refuse to the said plaintiff his damages of four hundred pounds, and therefore he brings suit, &c.; pledges, &c.

3d Breach, did not pay him his stipulated wages.

And the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the breach of covenant by the said plaintiff first above assigned, says, that he the said defendant did not without the licence, and against the will of the said plaintiff, discharge the said plaintiff from and out of the service of him the said defendant, and keep and continue him the said defendant so discharged from and out of the service of him the said defendant, and did not refuse to permit or suffer the said plaintiff to be or continue in the service of him the said defendant, and to teach and instruct, or cause the said plaintiff to be taught and instructed in the art of a mariner, in manner and form as the the said plaintiff hath above complained against him, and of this he puts himself upon the country, and the said plaintiff doth so likewise: And as to the breach of covenant by the said John Wood secondly above assigned, the said defendant says, that the said plaintiff, (*actio non*); because he says, that the said plaintiff, after the making of the said indenture of apprenticeship, and after he had entered and been received into the service of the said defendant, to wit, on the first day of August A. D. 1781, at London, &c. aforesaid, he the said defendant failed on a voyage to parts beyond the seas, in a certain ship or vessel whereof the said defendant is the master, and that the said plaintiff failed in and on board the said ship or vessel with the said defendant, to be by him he quitted the ship, and that defendant provided plaintiff with board and lodging as power under these circumstances.

Plea to 1st breach, that defendant did not discharge him.

To 2d breach, that plaintiff and defendant were shipwrecked in the West Indies, that defendant procured plaintiff a passage home, but that must as in his

taught

taught and instructed in the art of a mariner; and the said ship or vessel was afterwards, by the force of certain tempests and storms wrecked in parts beyond the seas, to wit, in the West Indies, with the said defendant and plaintiff in and on board the same; and that he the said defendant after the shipwreck of the said ship or vessel as aforesaid, and as soon as he the said defendant had it in his power so to do, did procure and engage one William Henderson, then being master of a certain other ship or vessel to furnish a passage for and to carry the said plaintiff from the West Indies aforesaid, to London aforesaid, and to provide sufficient meat, drink, and lodging for the said plaintiff from the West Indies aforesaid, to London aforesaid, that he the said plaintiff on his arrival there might be again employed in the service of the said defendant, and be provided with sufficient meat, drink, and lodging during the residue of the aforesaid term, according to the form and effect of the said indenture; and that the said plaintiff afterwards, to wit, on the twenty-sixth day of February A. D. 1782, with his own consent went on board the said last-mentioned ship or vessel, to be carried by the said William Henderson, in the said voyage from the West Indies aforesaid, to London aforesaid; and the said defendant further saith, that the said plaintiff after he so as aforesaid had gone on board the said last-mentioned ship or vessel for the purpose aforesaid, to wit, on the day and year last aforesaid, left and quitted the same, and did not at any time afterwards, during the said term in the said indenture mentioned, return into the service of the defendant, but on the contray thereof, wholly neglected and omitted so to do, against the will and consent of the said defendant, that is to say, at London, &c. aforesaid: *And the said defendant saith*, that from the time of the making of the said indenture unto the time of the said shipwreck, he the said defendant found and provided for the said plaintiff sufficient meat, drink, and lodging, according to the form and effect of the said indenture, and that from the time of the said shipwreck until the time of his the said plaintiff's quitting the said last-mentioned ship as aforesaid, he the said defendant found and provided for the said plaintiff meat, drink, and lodging in as ample manner as he the said defendant, under the circumstances attending and consequent to the said shipwreck, was able, and had it in his power to do, that is to say, at London, &c. aforesaid, and this, &c. wherefore, &c. if the said plaintiff ought to have or maintain his aforesaid action thereof against him, by reason of the said breach of covenant secondly above aforesaid, &c.: And as to the said breach of covenant by the said plaintiff lastly above assigned, he the said defendant saith, that the said plaintiff (*ad id non*); because he saith, that he the said defendant after the making of the said indenture, to wit, on the fourteenth day of September A. D. 1781, at London, &c. aforesaid, did pay to him the said plaintiff five pounds for the first year of the said term, according to the form and effect of the said indenture, and of the covenant of the said defendant in that behalf made as aforesaid; and the said defendant further says, that the

To 3d breach,
that he paid
wages for first
year.

the said plaintiff after the making of the said indenture of apprenticeship, and after he had entered and been received into the service of the said defendant, to wit, on the first day of August A. D. 1781, (*verbatim* like the last plea): And this, &c. wherefore, &c. if the said plaintiff ought to have or maintain his aforesaid action against him, by reason of the breach of covenant by the said plaintiff lastly above assigned, &c.

S. LAWRENCE.

And the said plaintiff, as to the said plea of the said defendant by him above pleaded in bar, as to the breach of covenant by the said plaintiff secondly above assigned, says (*precludi non*); because he says, that although true it is, that after the making of the said indenture of apprenticeship, and after he the said plaintiff had entered and been received into the service of the said defendant, he the said defendant did sail on a voyage to parts beyond the seas, in a certain ship or vessel, whereof he the said defendant was the master, and that he the said plaintiff sailed in and on board the said ship or vessel with the said defendant, to be by him taught and instructed in the art of a mariner; and that the said ship or vessel was afterwards, by the force of certain tempests and storms, wrecked in the said parts beyond the seas with the said defendant and plaintiff in and on board the same; and that the said defendant after the shipwreck of the said ship or vessel as aforesaid, and as soon as the said defendant had it in his power so to do, did procure and engage one William Henderson, then being master of a certain other vessel, to furnish a passage for and to carry the said plaintiff from the West Indies aforesaid, to London aforesaid, and to provide sufficient meat, drink, and lodging for the said plaintiff from the West Indies aforesaid, to London aforesaid, that he the said plaintiff on his arrival there, might be again employed in the service of the said defendant, and be provided with sufficient meat, drink, and lodging during the residue of the aforesaid term, according to the tenor and effect of the said indenture; and that he the said plaintiff afterwards, with his own consent, did go on board the said last-mentioned ship or vessel to be carried by the said William Henderson, in the said voyage from the West Indies aforesaid, to London aforesaid; and that he the said plaintiff after he so as aforesaid had gone on board the said last-mentioned ship or vessel for the purpose aforesaid, left and quitted the same, as the said defendant hath alledged in his aforesaid plea by him above pleaded in bar to the said breach of covenant secondly above assigned: Yet for replication in this behalf the said plaintiff says, that he the said plaintiff did afterwards during the said term in the said indenture mentioned, and as soon as he possibly could after he had so as aforesaid quitted the said ship of the said W. H. to wit, on the first of May A. D. 1782 aforesaid, at London, &c. aforesaid, return to the said defendant to serve the said defendant as such apprentice for the residue of the said term in the said indenture mentioned, and then and there was ready and willing, and offered to serve the said defendant as such apprentice for the then residue of the said term in the said indenture

Replication to 2d plea, that plaintiff after quitting the ship, returned to defendant and offered to serve him, which defendant refused.

COVENANT.—REJOINDER.

indenture mentioned; but that the said defendant then and there refused to receive the said plaintiff into his service, and did not from that time during the residue of the said term in the said indenture mentioned, find for the said plaintiff, his said apprentice, meat, drink, or lodging as he ought to have done according to the said indenture, but wholly refused and neglected so to do, contrary to the said indenture, and his covenant in that behalf made as aforesaid, and this the said plaintiff is ready to verify; wherefore he prays judgment and his damages, by reason of the premises to be adjudged to him, &c.: And the said plaintiff as to the said plea of the said defendant lastly above pleaded in bar, as to the said breach of covenant by the said plaintiff lastly above assigned, says, that he the said plaintiff by reason of any thing in that plea alledged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant; because he says, that the said defendant after the making of the said indenture, did not pay to him the said plaintiff five pounds for the first year of the said term, according to the form and effect of the said indenture, and the said covenant of the said defendant in that behalf made as aforesaid, as he the said plaintiff hath above in his said plea lastly above pleaded in bar alledged; and this the said plaintiff prays may be enquired of by the country, and the said plaintiff doth the like, &c.

H. RUSSELL.

Rejoinder and
issue.

And the said defendant, as to the plea of the said plaintiff by him above pleaded by way of reply to the plea of him the said defendant above pleaded, as to the breach of covenant by the said plaintiff secondly above assigned, says, that the said plaintiff by reason of any thing therein contained ought not to have or maintain his said action thereof against him, by reason of the said breach of covenant secondly above assigned; because he saith that the said defendant did not refuse to receive the said plaintiff into his service in manner and form as the said plaintiff hath in his second replication above alledged; and of this he puts himself upon the country, &c. and the said plaintiff doth the like, &c. therefore,

S. LAWRENCE.

Declaration by
master against
his apprentice
for not serving
his time.

LONDON, *ff.* William Sequest against Thomas Shepherd in a plea that he keep with him the covenant by him made with said plaintiff, according to the form and effect of a certain indenture thereof made between them the said plaintiff and said defendant, and thereupon said plaintiff, by A. B. complains, that whereas by a certain indenture made the eleventh day of, &c. at, &c. in, &c. between the said defendant by the name of, &c. son of, &c. of the one part, and the said plaintiff by the name of, &c. of the other part, which said indenture, sealed with the seal of said defendant, and bearing date the day and year aforesaid, the said plaintiff now brings into court here: said defendant did put himself apprentice to the said plaintiff to learn his art, and with him after

after the manner of an apprentice, serve from the day of the date of said indenture unto the full end and term of seven years from thence next ensuing, and fully to be compleat and ended; during which said term said apprentice his master lawfully should and would serve, his secrets keep, and lawful commands every where gladly do; he should do no damage to his said master, nor see it to be done by others, but to his power should let or forthwith give notice to his said master of the same; the goods of his said master he should not waste, nor lend them unlawfully to any; hurt to his said master he should not do, cause, or procure to be done, he should neither buy nor sell without his said master's leave; taverns or alehouses he should not haunt; at cards, dice, tables, or any unlawful game he should not play; matrimony he should not contract, nor from the service of his said master day or night should absent himself; but in all things as a faithful and honest apprentice should and would demean and behave himself towards his said master, and all his family during said term; and for the true performance of all and singular the covenants and agreements in said indenture contained, either of the said parties bound himself to the other firmly by the said indenture, as in and by the said indenture, relation being thereto had, will more fully appear: And said plaintiff avers, that said defendant on, &c. in, &c. at, &c. in pursuance of said indenture, entered and was received into the service of said plaintiff; and said plaintiff further saith, that afterwards, and during the continuance of said term of seven years in said indenture mentioned, and before the end and expiration thereof, that is to say, on, &c. he said defendant without the leave, license, and consent, and against the will of said plaintiff, departed, absented, and withdrew himself from and out of the service of said plaintiff, and stayed and continued from and out of the service of said plaintiff for and during a long space of time, to wit, from thence until the end, expiration, and determination of said term of seven years in said indenture mentioned, contrary to the tenor and effect, true intent, and meaning of said indenture, and of said covenant of him said defendant so by him made in this behalf as aforesaid; whereby and by means whereof he said plaintiff, during all that time, wholly lost and was deprived of all the profit, benefit, and advantage that might and would have arisen and accrued to him from the service of said defendant during all that time at, &c. aforesaid; and so said plaintiff in fact saith, that said defendant, although often requested, hath not kept said covenant, &c. but, &c.; damage one hundred pounds; and suit, &c.

V. LAWES.

MIDDLESEX, to wit. Joseph Hutchinson against John Colegate Cripps, being, &c. in a breach of covenant, for that whereas by a certain indenture made the seventh day of, &c. to plaintiff, who was his apprentice, with meat, drink, and lodging, and medicines and medical assistance during the sickness of plaintiff, whereby he was obliged to find them himself.

Declaration in
covenant a-
gainst defendant
for not finding

VOL. III.

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wit,

APPRENTICE v. MASTER.

wit, at, &c. between the said Joseph and the said John, the counterpart of which said indenture, sealed with the seal of the said John, the said Joseph now brings into court here, the date whereof is the day and year aforesaid; the said Joseph did put himself apprentice to the said John, by the name of John Colegate Cripps, citizen and vintner of London, to learn his art, and with him after the manner of an apprentice to serve from the day of the date of the said indenture, until the full end and term of seven years from thence next following to be fully compleat and ended; during which term the said apprentice his said master faithfully should serve, his secrets keep, his lawful commands every where gladly do; he should do no damage to his said master, nor see it to be done of others, but that he to his power should let or forthwith give warning to his said master of the same; he should not waste the goods of his said master, nor lend them unlawfully to any; he should not commit fornication, nor contract matrimony within the said term; he should not play at cards, dice, tables, or any other unlawful games, whereby his said master might have any loss with his own goods or others during the said term without licence of his said master; he should neither buy nor sell; he should not haunt taverns or playhouses, nor absent himself from his said master's service day or night unlawfully, but in all things as a faithful apprentice he should behave himself towards his said master during the said term; and the said master, that is to say, the said J. C. C. in consideration of the service of his said apprentice in the same art and mystery which he used, by the best means that he could should teach and instruct, or cause to be taught and instructed, finding unto his said apprentice meat, drink, lodging, and all other necessaries, *according to the custom of the city of London* during the same term, performance of all and every the said covenants and agreements, either of the said parties bound themselves unto the other by the said indenture, as by the said indenture, relation being thereto had, will more fully appear: And the said Joseph in fact further says, that although he the said Joseph, on, &c. entered and was received into the service of the said J. C. C. and continued to serve the said J. C. C. as such apprentice as aforesaid, for and during the said term of seven years, in the said indenture mentioned, according to the tenor and effect of the said indenture; yet the said John in fact further says, that the said J. C. C. did not find unto him the said Joseph meat, drink, lodging, and all other necessaries, *according to the custom of the city of London* during the said term, according to the tenor and effect of the said indenture, and of the covenant of the said J. C. C. in that behalf made as aforesaid, but on the contrary, he the said Joseph says, that although he the said Joseph during the said term, to wit, on, &c. at, &c. became and was sick, ill, and indisposed, and so for a long time during the aforesaid term did continue, whereof the said J. C. C. had notice, to wit, at, &c.; and although according to *the custom of the city of London in such like cases*, and the tenor and effect of the aforesaid indenture, the

the said J. C. C. ought to have found unto the said Joseph for and during such sickness and indisposition, certain necessary medicines and medical assistance; yet the said Joseph avers, that the said J. C. C. did not nor would find unto him the said Joseph such necessary medicine and medical assistance for and during his aforesaid sickness and indisposition, but refused and neglected so to do, and therein wholly failed and made default, contrary to the tenor and effect of the aforesaid indenture, and of the aforesaid covenant of the said J. C. C. in that behalf, to wit, at, &c. whereby he the said Joseph was forced and obliged to find and pay for such medicines and medical assistance himself, and on that occasion to lay out and expend divers sums of money, amounting in the whole to a large sum of money, to wit, the sum of thirty pounds of lawful money of Great Britain, to wit, at, &c.: And whereas, &c. &c. (exactly the same as the first, only omitting what is in italic, and then conclude as follows): And so the said Joseph saith, that the said J. C. C. hath not kept with the said Joseph his said covenants so by him made with the said Joseph as aforesaid, but hath broken the same, to the damage of the said Joseph of one hundred pounds, and therefore he brings his suit, &c. 2d Count.

V. LAWES.

And the said defendant by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the said breach of covenant by the said Joseph in the first Count above assigned, he the said J. C. C. says, (*adlio non*;) because he says, that the said J. C. C. did find unto him the said Joseph meat, drink, lodging, and all other necessities, *according to the custom of the city of London*, during the said term in the said indenture mentioned, according to the tenor and effect of the said covenant, and of the covenant of the said J. C. C. in that behalf made as aforesaid, and of this he puts himself upon the country, &c.: And for further plea in this behalf, as to the said breach of covenant by the said Joseph in the said first Count of the said declaration above assigned, the said J. C. C. by leave of, &c. says, (*adlio non*;) because he says, protesting that he the said J. C. C. ought not, *according to the custom of the city of London*, to have found unto the said Joseph for and during such sickness and indisposition, necessary medicines and medical assistance, for plea in this behalf, he the said J. C. C. says, that he was always ready and willing, and offered to find unto him the said Joseph necessary medicines and medical assistance for and during his said sickness and indisposition in the said first Count of the said declaration mentioned, but the said Joseph then and there wholly refused to accept the same, and this, &c.; wherefore, &c. if, &c. (add two more pleas similar to the last, only omitting what is in italic, and saying "second Count" instead of the first.)

W. BALDWIN.

Declaration against an apprentice, for revealing the secrets of his master's business, &c.

LANCASHIRE, to wit. Roger Farrand and Joseph Adkin complain of John Whitehead being, &c. in a plea of breach of covenant: for that whereas by a certain indenture made the eighteenth day of, &c. at, &c. between the said John, by the name and addition of John Whitehead, of M. in the county of L. printer, of the one part; and the said Roger and Joseph, by the name and addition of R. F. and J. A. both of the same place, printers, embossers, and partners, of the other part (one part of which said indenture, sealed with the seal of the said John, and bearing date the day and year aforesaid, they the said R. and J. now bring here into court); he the said John, for the considerations therein mentioned, did, &c. &c. (recite the indenture), as by the said indenture, reference being thereto had, will amongst other things more fully and at large appear: And the said R. and J. in fact say, that although the said R. and J. from the time of the making of the said indenture, hitherto have exercised and carried on, and still do exercise and carry on the said business of a printer and embosser in the said indenture mentioned, by divers ways, means, and methods, which, until the discovering thereof by the said John as hereafter mentioned, were unknown to others; and although the said John, upon the making of the said indenture, entered and was received into the service of them the said R. and J. in their said business, upon and under the terms in the said indenture, and continued in such service from thence for a long time, to wit, until the thirteenth day of, &c. A. D. 1787; and although they the said R. and J. have always, from the time of the making of the said indenture, performed and fulfilled all things in the said indenture contained on their part and behalf of them the said R. and J. to be performed and fulfilled, to wit, at, &c.: Yet protesting that the said John did not, whilst he was so in the service of the said R. and J. as aforesaid, perform or fulfil any thing in the said indenture contained on the part and behalf of him the said John to be performed and fulfilled; they the said R. and J. in fact say, that the said John hath not faithfully and inviolably kept the discoveries, inventions, improvements, and other secrets in trade of the said Roger and Joseph, but on the contrary, after the making of the said indenture, and whilst he the said John was so in the service of the said R. and J. as aforesaid, to wit, on, &c. and before and since, to wit, at, &c. he the said John did discover, disclose, reveal, and make known, and cause to be discovered, &c. unto one J. H. and one H. A. and divers other persons who now are at present unknown to the said R. and J. divers and very many of the said discoveries, inventions, improvements, and other secrets in trade of them the said R. and J. to wit, the machines, engines, compositions, process, and method then and there used by them the said R. and J. in embossing goods in their aforesaid business, and divers other of the secrets in trade of them the said R. and J. contrary to the tenor and effect of the said indenture, and of the aforesaid covenant of the said John in that behalf made as aforesaid: And the said Roger and Joseph further say, that the

the said John afterwards, and during the said term of seven years in the said indenture in that behalf mentioned, and before the full end and expiration thereof, to wit, on, &c. at, &c. did enter into, carry on, and was concerned in the printing and embossing business for other and different persons than the said R. and J. to wit, for and with the said J. H. and A. H. contrary to the tenor and effect of the said indenture, and of the aforesaid covenant of the said John in that behalf made as aforesaid; whereby, and by reason of which said several premises, the said machinery, engines, &c. used by them the said R. and J. in their said business, hath been and is divulged, and made known to the said J. H. and to many others, and in consequence thereof their said secrets and inventions in trade, in their said trade and business, are very much reduced in value, and are in danger of becoming wholly useless and unprofitable to them in future; and by means of the same having been so revealed and disclosed to the said J. H. as aforesaid, they the said R. and J. to prevent his making use of them to their prejudice, or any further disclosing them, were forced and obliged to take him into, and to engage him in their service in their said business for a certain long term of years, whereof six and more are still to come and unexpired, at and upon certain very high and disadvantageous terms and wages, to wit, at the wages of two pounds two shillings *per* week, and have been obliged to pay, and must hereafter pay him such wages during the remainder of his said contract or employment, which they otherwise could not nor would have done, to wit, at, &c. and so, &c. common conclusion in covenant.

V. LAWES.

MIDDLESEX, to wit. John Walsh, late of, &c. was attached by his majesty's writ of privilege issuing out of the court of our lord the king of the bench here, to answer unto George Parrott, gentleman, one of the attornies of the same court, according to the liberties and privileges of the said court for such attornies and other ministers of the court aforesaid from time immemorial there used and approved of, in a plea that he keep with the said plaintiff the covenants made between the said plaintiff and defendant, according to the force, form, and effect of certain articles of agreement thereof made between them, &c.: and thereupon the said plaintiff, in his proper person, complains, that whereas by certain articles of agreement made on, &c. to wit, at, &c. in, &c. between one George Walsh, son of the said John (by the name and addition of George Walsh, son of John Walsh, of South-street, in the parish of St. George's, Hanover-square, in the county of Middlesex) of the first part; the said plaintiff, (by the name, &c.) of the second part, and the said defendant (by the name, &c.) of the third part; (one part of which said articles of agreement, sealed with the seal of the said defendant, he the said plaintiff now brings here into court, the date whereof is the day and year aforesaid), the said G. W. did, by and with the

Declaration in covenant by an attorney against the father of his clerk, on articles for embezzling, inattention, revealing secrets, &c.

consent, direction, and approbation of the said John his father, put and place himself to and with the said plaintiff, as his clerk, from the day of the date of the said articles of agreement, for and during the full end and term of five years from thence next ensuing, and fully to be compleat and ended, if the said plaintiff and G. W. should both of them so long live; and the said defendant, for himself, his executors and administrators, did thereby covenant, promise, and agree to and with the said plaintiff, that is to say, that the said G. W. his son should and would, during the said term, well, duly, truly, and faithfully dwell with and serve the said plaintiff as his clerk, and demean and behave himself as a clerk ought to do to his master, and well and truly, to the utmost of his power and ability, dispatch and perform all business which should be given him in charge by the said plaintiff, and also did and should readily and willingly execute, perform, and obey all his lawful commands, &c. &c. [set forth the articles], as by the said articles, reference being thereunto had, will amongst other things more fully and at large appear; by virtue of which said articles of agreement the said G. W. afterwards, to wit, on, &c. at, &c. in, &c. entered, and was then and there received into the service of the said plaintiff as his clerk, and was and continued to be the clerk of the said plaintiff, under, and by virtue of the said articles of agreement for a long space of time, to wit, from the day of the date thereof until and at the end and expiration of the said term of five years therein mentioned, to wit, at, &c. in, &c.; and although he the said G. P. did, during the said term, well and truly perform, fulfil, and keep all things in the said articles of agreement mentioned and contained on his part and behalf to be performed, fulfilled, and kept, according to the tenor and effect, true intent and meaning of the said articles of agreement, to wit, at, &c. in, &c.; yet, protesting that the said John hath not performed, fulfilled, or kept any thing in the said articles of agreement mentioned on his part and behalf to be performed, fulfilled, and kept, according to the tenor and effect, true intent and meaning thereof: the said G. P. in fact saith, that the said G. W. son of the said John, did not nor would, during the said term, faithfully dwell with or serve the said G. P. as his clerk, or demean or behave himself as a clerk ought to do to his master, according to the tenor and effect, true intent and meaning of the said articles of agreement in that behalf, but on the contrary thereof he the said G. W. during the said term, to wit, on, &c. and on divers other days and times between that day and the end and expiration of the said term, at, &c. in, &c. wrongfully and unjustly, without the licence or permission in writing, or otherwise, and against the will of the said plaintiff, withdrew and absented himself from the service and dwelling of the said G. P. contrary to the form and effect of the said articles of agreement, and of the said covenant of the said John by him in that behalf made as aforesaid: And the said G. P. further saith, that the said G. W. did not nor would, during the said term, well and truly, to the utmost of his power

or ability, dispatch or perform all or any of the business which was given him in charge by the said G. P. but wholly refused and neglected so to do, to wit, at, &c. in, &c. contrary to the form and effect of the said articles of agreement, and of the said covenant of the said John by him in that behalf made as aforesaid: And the said G. P. in fact further saith, that the said G. W. did, during the said term, to wit, on, &c. and on divers other days and times between that day and the end and expiration of the said term, at, &c. in, &c. wrongfully and unjustly embezzle and purloin divers sums of money to a large amount, to wit, to the amount of one hundred pounds of lawful money of Great Britain, and also certain wearing apparel, goods and chattels of a large value, to wit, of the value of fifty pounds of like lawful money which belonged to the said G. P. and divers of his clients, contrary to the form and effect of the said articles of agreement, and of the said covenant of the said John by him in that behalf made as aforesaid: And the said G. P. in fact further saith, that the said G. W. did, during the said term, to wit, on, &c. and on divers other days and times between that day and the end and expiration of the said term, at, &c. in, &c. wrongfully and unjustly reveal the secrets of the said G. P. to divers of his clients, and to divers other persons, contrary to the form and effect of the said articles of agreement, and of the said covenant of the said John by him in that behalf made as aforesaid: And the said G. P. in fact further saith, that the said John (although often requested, &c.) did not nor would, during the said term, find and provide for him the said John good or sufficient meat, drink, washing, lodging, cloaths, physic, or other necessaries fitting or proper for a clerk or apprentice, but wholly refused and neglected so to do, to wit, at, &c. in, &c. contrary to the form and effect of the said articles of agreement, and of the said covenant of the said John so by him made in that behalf as aforesaid; and so the said G. P. in fact saith, that the said John (although often requested so to do) hath not kept the said covenants so by him made with the said G. P. in manner and form aforesaid, but hath broken the same, and to keep the same with the said G. P. hath hitherto wholly refused, and still refuses so to do, wherefore the said G. P. saith, that he is injured, and hath sustained damage to the value of pounds, and therefore he brings his suit.

Drawn by MR. TIDD.

This precedent comes strictly under *Articles of Agreement, ante*, but I thought it useful to class all these precedents relating to Master and Servant, Apprentice Clerk, &c. under one head.

BY ASSIGNEES AGAINST ASSIGNOR.

Declaration states a demise from A. to B. from B. to defendant, (on assignment of lease) to plaintiff's assignees; a deed poll from the plaintiff's assignees to the plaintiff; a covenant in the original lease from A. to B. that B. should not under let premises without A's consent, and should repair; covenant in lease from defendant to plaintiff's assignee; that the lease from B. to defendant was a good and valid lease and was not forfeited, and that defendant had full power to assign, which he had *not per quod, &c.*

LONDON, to wit. Richard Forrest, late of London, merchant, was summoned to answer Jeremiah Morrell and Thomas Cole, assignees of Edward Francis, in a plea that the said Richard keep with him the said Jeremiah and Thomas the covenants made between him and the said Edward Francis and his assigns, according to the force, form, and effect of a certain indenture thereof made between them: and thereupon the said Jeremiah and Thomas, by A. B. their attorney, complain, that whereas, by a certain indenture of lease, made the twenty-seventh day of September, A. D. 1781, to wit, at, &c. between one Ann Howard of the one part, and one Daniel Dibble of the other part (one part of which said indenture, sealed with the seal of the said A. H. they the said Jeremiah and Thomas now bring into court here, the date whereof is the same day and year aforesaid) the said A. H. for the considerations therein mentioned did demise, lease, set, and to farm let unto the said Daniel Dibble three certain messuages or tenements, with the appurtenances thereunto belonging, situate, lying, and being in the parish of, &c. (and in the said indenture more particularly mentioned and described), to have and to hold the said three several messuages or tenements, with the appurtenances, unto the said D. D. his executors, administrators, or assigns, from the feast of St. Michael the Archangel then next ensuing the date of the indenture, for and during, and unto the full end and term of eighteen years from thence next ensuing, and fully to be complete and ended, yielding and paying therefore yearly, and every year during the said term thereby demised unto the said A. H. in case she should so long live, and her assigns, and in case of her death to such person or persons as should become intitled to the freehold or inheritance thereof, the rent or sum of fifty-seven pounds of good and lawful money of Great Britain, upon the four most usual feasts or times of payment of rent in the year, that is to say, the Nativity of, &c. &c. by even and equal portions, the first payment thereof to begin and be made on the feast of the Nativity of Our Lord Christ then next ensuing the date of the said indenture; and the said D. D. did for himself, his executors, administrators, and assigns, covenant, promise, and agree, to and with the said A. H. her heirs and assigns (amongst other things), that he the said D. D. his executors and administrators, should (a) *not, during the said term, by the said indenture of lease demised, grant, demise, bargain, assign, or let the said thereby demised messuages or premises, or either of them, or that then present indenture of lease, to any person or persons whatsoever, without the licence or consent of the said A. H. or such other person or persons as should* uphold, support, sustain, maintain, tile, glaze, paint, pave, scour, cleanse, empty, amend, and keep the said three several last-mentioned premises or tenements, and all the glass windows, rails, &c. &c. belonging to the same, in, by, and with all and all manner of needful and necessary reparations and amendments whatsoever, when, where, and as often as need or occasion should require during the said last mentioned term (casualties happening by fire only excepted)."

To be inserted in 2d Count.

(a) "and would at their, or some, or one of their own proper costs and charges, well and sufficiently repair,

be thereafter intituled to the freehold and inheritance of the same, first had and obtained in writing, under his, her, or their hand and seal; provided always, that if it should happen that the said yearly rent of fifty-seven pounds, or any part thereof, should be behind and unpaid for the space of twenty days next after any of the said days or times on which the same ought to be paid as aforesaid, being lawfully demanded; or if the said several messuages or premises should not be well and properly repaired, and kept in repair, according to the covenant in the said indenture of lease contained for that purpose; or if the said D. D. his executors, administrators, or assigns should let, demise, or assign the said premises, or any part thereof, to any person or persons whatsoever, without the license first had and obtained in manner therein and hereinbefore mentioned, that then and from thenceforth, and in either of the said cases, it should and might be lawful to and for the said A. H. and her assigns, and such other person or persons as should, after her death, be entitled to the freehold and inheritance of the said thereby demised premises, into, and upon the same, or any part thereof, in the name of the whole, wholly to re-enter, and the same to have again, repossess, and enjoy, as in her or their first and former estate and estates, and the said D. D. his executors, administrators, and assigns, and all other occupiers thereof, and from thence utterly to expel, put out, and remove any thing in the said indenture before contained to the contrary notwithstanding, as by the said indenture, reference being thereto had (amongst other things) will more fully and at large appear; by virtue of which said demise he the said D. D. afterwards, to wit, on, &c. at, &c. entered into the said demised premises, with the appurtenances, and became and was possessed thereof; and being so thereof possessed, by a certain other indenture, made the twenty-fourth day of March, A. D. 1785, at, &c. in, &c. between the said D. D. of the one part, and the said Richard of the other part (one part of which said last-mentioned indenture, sealed with the seal of the said D. D. they the said Jeremiah and Thomas now bring here into court, the date whereof is the day and year last aforesaid), the said D. D. for the considerations therein mentioned, did demise, lease, set, and to farm let unto the said Richard all those the aforesaid three several messuages or tenements, with the appurtenances, so demised to him the said D. D. as aforesaid, with their and every of their appurtenances, unto the said Richard, his executors, administrators, and assigns, from the feast of the Annunciation of the Blessed Virgin Mary then next ensuing the date of the said last-mentioned indenture, for and during, and unto the full end and term of fourteen years and one half-year from thence next ensuing, and fully to be complete and ended, yielding and paying therefore yearly and every year, during the said term of fourteen years and an half, by the said last-mentioned indenture demised unto the said D. D. his executors, administrators, and assigns, the rent or sum of fifty-seven pounds of good and lawful money of Great Britain, upon the four most usual feasts or times
of

COVENANT ON INDENTURE OF

of payment of rent in the year, that is to say, the Nativity of, &c. by even and equal portions, the first payment thereof to begin and be made on the feast of the Nativity of St. John the Baptist then next ensuing the date of the said last-mentioned indenture, as by the said last-mentioned indenture (relation being thereto had) will (amongst other things) more fully and at large appear; by virtue of which said last-mentioned demise he the said Richard, afterwards, to wit, on, &c. entered into the said demised premises, with the appurtenances, and became and was possessed thereof; and being so thereof possessed, by a certain other indenture, made the twenty-third day of April, A. D. 1787, at, &c. between the said Richard of the one part, and the said Edward Francis of the other part (one part of which said last-mentioned indenture, sealed with the seal of the said Richard, they the said Jeremiah and Thomas now bring here into court, the date whereof is the day and year last aforesaid), reciting in part the said indenture of lease of the twenty-fourth day of March, 1785, he the said Richard, for the considerations in the said indenture lastly above brought into court here mentioned, assigned, transferred, and set over unto the said Edward Francis all those the said three several messuages or tenements, and premises, therein and herein before particularly mentioned and described, and all the estate, right, title, interest, term of years, benefit, claim, and demand whatsoever of him the said Richard to the said three several messuages or tenements, and premises, by the said last-mentioned indenture assigned, together with the said last-mentioned in part recited indenture of lease, to have and to hold the said three several messuages or tenements, and premises, thereby assigned, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said E. F. his executors, administrators, and assigns, from the feast day of St. John the Baptist then next ensuing, for and during the whole of the said term of fourteen years and one half-year, then to come and unexpired, granted by the said last-mentioned in part recited indenture of lease, from thence then next ensuing and fully to be complete and ended; and the said Richard did by the said indenture lastly above brought into court here, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said E. F. his executors, administrators, and assigns, in manner following, that the said last-mentioned recited indenture of lease was a good and valid lease in the law for all the term and estate thereby granted, and was not forfeited, surrendered, or otherwise become void or voidable; and also that he the said E. F. at the time of the sealing and delivery of the said indenture lastly above brought into court here, had in himself good right, full power, and lawful and absolute authority to bargain, sell, assign, transfer and set over the said premises thereby assigned unto the said E. F. his executors, administrators, and assigns, in manner and form as aforesaid, as by the said last-mentioned indenture (reference being thereto had) will (amongst other things) more fully and at large appear; by virtue of which said last-mentioned

tioned indenture he the said E. F. afterwards, to wit, on, &c. entered into the aforefaid demised premises, with the appurtenances, and became and was possessed thereof; and being so thereof possessed, by a certain deed-poll, made the seventh day of December, A. D. 1787, at, &c. in, &c. indorsed the said last-mentioned indenture (which said deed-poll, sealed with the seal of the said E. F. they the said Jeremiah and Thomas now bring here into court, the date whereof is the day and year last aforefaid), the said E. F. for the considerations in the said deed-poll mentioned, did bargain, sell, assign, transfer, and set over unto the said Jeremiah and Thomas all those the said three several messuages or tenements in the said last-mentioned indenture mentioned, and all and singular other the premises, with the appurtenances, in and by the said last in part recited indenture of lease demised, and by the indenture of the twenty-third day of April, 1787, assigned, and all his estate, right, title, interest, term, and term of years therein then yet to come and unexpired, benefit, profit, property, possession, claim, and demand whatsoever, both at law and equity, of, in, to, or out of the said leasehold premises, together with the said last in part recited indenture of lease and assignment thereof, to have and to hold the said messuages or tenements, and all and singular other the premises by the said deed-poll assigned, or intended to be, with their appurtenances, unto the said Jeremiah and Thomas, their executors, administrators, and assigns, from thenceforth for and during all the rest, residue, and remainder of the term of fourteen years and one half of a year, in and by the said last in part recited indenture of lease demised therein, then yet to come and unexpired, as by the said deed-poll (reference being thereto had, will, amongst other things, more fully and at large appear); by virtue of which said deed-poll, they the said Jeremiah and Thomas afterwards, to wit, on the day and year last aforefaid, entered into the aforefaid demised premises, with the appurtenances, and became and were possessed thereof; and although they the said Jeremiah and Thomas always well and truly performed and fulfilled all things in the said indenture of the twenty-third day of April, 1787, contained, on the part and behalf of the said E. F. and his assigns, to be performed and fulfilled, according to the tenor and effect of the said deed-poll; yet, protesting that the said Richard hath not performed or fulfilled any thing in the said last-mentioned indenture contained on his part and behalf to be performed and fulfilled: the said Jeremiah and Thomas in fact say, that the said indenture of lease in the said indenture of the said twenty-third day of April 1787 mentioned, and thereby in part recited as aforefaid, was not, at the time of the making of the said last-mentioned indenture, a good and valid lease in the law for all the term and estate thereby granted, or any part thereof, nor had the said Richard in himself good right, full power, and lawful and absolute authority to bargain, sell, assign, transfer, and set over the said premises by the said last-mentioned indenture assigned unto the said E. F. his executors, administrators, and assigns, in man-
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COVENANT ON INDENTURE OF LEASE.

To be inserted
in 2d Count.

"The said three several last-mentioned demised messuages or tenements and premises, before the making of the said last-mentioned indenture, and whilst the same were in the possession of the said Richard as aforesaid, to wit, on, &c. and from thence until and at the time of the making of the said last-mentioned indenture, were respectively ruinous, out of repair, and in decay, in the chimnies, roofs, &c. &c. for want of needful and necessary reparations and amendments, and not by casualties happening by fire, contrary to the tenor and effect of the said covenant and provisoes."

ner and form as aforesaid, but on the contrary thereof the said Joseph and Thomas aver, that the said indenture of lease in the said indenture of the twenty third day of April 1787 mentioned, and thereby in part recited as aforesaid, at the time of the making of the said last-mentioned indenture, was a bad, invalid, forfeited, and voidable lease, and the said Richard had not in himself good right, full power, and lawful and absolute authority to bargain, sell, assign, transfer, and set over the said premises by the said last-mentioned indenture assigned unto the said E. F. his executors, administrators and assigns, in manner and form aforesaid, for that *the said indenture of lease so mentioned, and in part recited in the said indenture of the twenty-third day of April 1787 as aforesaid, had been and was granted, and the said D. D. did thereby demise and let the said messuages and premises, so to him demised as aforesaid, to the said Richard, without the licence and consent of the said A. H. first had and obtained in writing under her hand and seal, to wit, at, &c. contrary to the tenor and effect of the aforesaid covenant and provisoes* in the said indenture of lease of the twenty-third day of September 1781 in that behalf mentioned and contained, whereby the said indenture of lease so mentioned and in part recited in the said indenture of the twenty-third day of April 1787, became, and at the time of making the said last-mentioned indenture, was bad, invalid, forfeited, and voidable, for and on account of that cause of forfeiture; and being so forfeited and voidable, the said A. H. after the making of the said deed-poll and assignment to the said Joseph and Thomas, in the court of our lord the king before the king himself (the said court then and still being held at Westminster in the county of Middlesex), instituted and brought a certain action or suit in a plea of trespass and ejectment, in order to avoid the said lease of the twenty-fourth day of March 1785, so granted by the said D. D. as aforesaid upon and for such cause of forfeiture as aforesaid; and afterwards, to wit, in Easter term, in the twenty-eighth year of the reign of our lord the now king, by the consideration and judgment of the said court recovered judgment in the said action or suit, and thereby avoided the said last-mentioned lease upon and for such cause of forfeiture thereof as aforesaid, and in consequence thereof possession of the aforesaid premises was, and hath been since taken and obtained by and on the behalf of the said A. H. under and by virtue of a certain writ of our lord the king of *habere facias possessionem*, issued out of the said court of our said lord the king, before the king himself, upon the aforesaid judgment, whereby the estate and interest of the said Jeremiah and Thomas, under the aforesaid deed-poll, being of a large value, to wit, of the value of one thousand pounds of lawful money of Great Britain, were, have been, and are wholly defeated and destroyed, and the said Jeremiah and Thomas have lost and been deprived, and must hereafter lose and be deprived of all rents, profits, and other benefit thereof, and have been and were also obliged to lay out and expend divers sums of money, amounting in the whole to a large sum

sum of money, to wit, the sum of one hundred pounds of like lawful money, in and for the costs of the said suit or action in ejectment, to wit, at, &c. *And whereas* by a certain other indenture, made the twenty-seventh day of September in the year 1781 as aforesaid, at, &c. between the said A. H. &c. &c. (this Count same as the first, only inserting what is wrote in the margin, and omitting what is in italic, and then conclude): And so the said Jeremiah and Thomas say, that the said Richard (although often requested) hath not kept the covenants so by him made with the said E. F. as aforesaid, and his assigns, but hath broken the same, and to keep the same with the said Jeremiah and Thomas hath hitherto wholly refused, and still refuses, to wit, at, &c. to the damage of the said Jeremiah and Thomas of two thousand pounds; and therefore he brings his suit, &c. *Drawn by MR. LAWES.*

ad Count.

Upon considering this case with attention, I think it advisable to have two Counts upon it; one alledging the forfeiture of the lease granted by D. D. to be on account of its having been granted without leave; and another, alledging the forfeiture to have been incurred by the dilapidations; for whatever may have been the ground of the verdict in ejectment, the defendant in the present action being no party to that, is at liberty to dispute the propriety of that judgment; and though the verdict in that action may have been obtained upon the ground of the underlease being without licence, yet the defendant is competent in this action to contend (if the fact will bear him out) that the forfeiture so incurred was obtained upon some other ground, or that it was waived by the acceptor of rent after the granting of the underlease, and after notice of the granting of it, and that the lessor of the plaintiff ought not therefore to have recovered. Indeed, it is not unlikely to be contended, that the ejectment was not brought upon that ground, but upon account of the dilapidations, and the notice will most likely be brought forward as evidence of that fact. In this situation of things, therefore, I have thought it advisable to have

a second Count, alledging the dilapidations as the cause of forfeiture, although in truth the verdict in ejectment was upon another ground. There was no alledging that cause of forfeiture, however, to consist in not repairing, pursuant to the notice for that purpose, as that notice did not expire till after the assignment from Forrest to Francis, in which the former covenants that the lease was at that time, to wit, at the time of such assignment, a valid lease. I have therefore necessarily alledged the cause of forfeiture to be in the premises being out of repair at an antecedent period, contrary to the general covenant, to repair without regard to any particular notice. It is not likely that the execution of any of the deeds will be disputed by the plea, of course, therefore, they will in that case stand admitted; but the plaintiffs must be prepared with evidence of both causes of forfeiture, and of the evidence on which the verdict in ejectment was obtained, and they must also prove the notices served on the defendant, and their application to him to defend such ejectment, together with the judgment of execution of the writ of possession, and the money paid by them for their costs, &c.

V. LAWES.

Hilary Term, 28. Geo. 3.

KENT, to wit. Richard Daniel complains of Henry Hall, being, &c. of a plea of breach of covenant: for that whereas by a certain indenture made the ninth day of, &c. to wit, at, &c. between the said Richard, by the name and description of Richard Daniel, of, &c. in, &c. yeoman, of the one part, and the said Henry, by the name and description of, &c. of the other part, one part of which said indenture, sealed, &c. he the said Richard, for the considerations in the said indenture mentioned, did demise, Declaration against defendant, for committing waste on premises demised to him by the plaintiff, cutting down trees, &c. and not paying the rent.

lease,

lease, and to farm-let unto the said Henry, his executors and administrators, all that barn, with the barn-yard and stable thereto belonging, as the same was then fenced in, situate, and being near Noke-street, in, &c. and also all those several pieces or parcels of arable land, lying and being in the said parish of, &c. containing by estimation eighteen acres, were the same more or less, five pieces or parcels whereof were lying in, &c. ; and also all those two several pieces or parcels of meadow land, containing by estimation ten acres, were the same more or less, lying and being in, &c. near a certain place called, &c. all which said premises were part and parcel of a certain farm, then late the property and in the occupation of R. D. deceased, and had lately been parted from the said farm, and were thereby intended to be demised to the said Henry, with their appurtenances, together with all ways, roads, paths, and passages, unto and from, and out of the same premises (copy the deed to the end), as by the said indenture, reference being thereto had, will amongst other things more fully and at large appear : by virtue of which said demise he the said Henry entered into and upon all and singular the said demised premises with the appurtenances, and was, and from thence hitherto hath been, and still is thereof possessed for the said term so to him thereof demised as aforesaid : And the said Richard in fact further saith, that although he the said Richard hath, from the time of the making of the said indenture of lease, hitherto well and truly performed all things in the said indenture contained on his part and behalf to be performed and fulfilled, according to the tenor and effect, true intent and meaning thereof; yet, protesting that the said Henry hath not performed or fulfilled any thing in the said indenture contained on his part and behalf to be performed and fulfilled, according to the tenor and effect thereof, he the said Richard in fact says, that nine pounds nine shillings of the said yearly rent of eighteen pounds eighteen shillings in the said indenture mentioned, for half a year of the said demised term, ending and ended on the feast-day of, &c. at, &c. on that feast-day in the year aforesaid, at, &c. became and was due, owing in arrear, and unpaid from the said Henry to the said Richard, and still are in arrear and unpaid, contrary to the tenor and effect of the said indenture of lease, and of the covenant of the said Henry in that behalf made as aforesaid : And the said Richard in fact further says, that the said Henry, after the making of the said demise, and during the continuance thereof, to wit, on, &c. and before the exhibiting the bill of the said Richard, did lop, top, and shrove divers, to wit, one thousand trees, then standing, growing, and being on the said demised lands and premises, which had not been thentofore usually lopped, topped, and shroved, contrary to the tenor and effect of the said indenture of lease, and of the covenant of the said Henry in that behalf made as aforesaid, whereby the said trees, together with the estate and interest of and in the demised premises became and were very much injured, lessened in value, and damnified : And the said Richard in fact further says, that the said Henry, after the making of the said demise,

mise, and during the continuance thereof, to wit, on, &c. and between that day and the exhibiting, &c. did commit, and permit and suffer to be done, into and upon the said demised premises, wilful and negligent waste, spoil, hurt, and destruction, to wit, in there cutting down divers, to wit, five hundred timber and other trees and pollards, and a large quantity of hedging and fencing, prostrating, spoiling, and destroying, there then growing and being on the said demised lands and premises, and in permitting and suffering divers, to wit, five hundred other timber and other trees and pollards, and a large quantity of hedging and fencing there also respectively growing and being in and upon the said demised lands and premises, to be cut down, prostrated, spoiled, and destroyed, and in various other particulars, respects, and instances, contrary to the tenor and effect of the aforesaid indenture of lease, and of the covenants of the said Henry in that behalf made as aforesaid, whereby the said estate and interest of the said Richard of and in the said demised premises, became and was further injured and damaged, to wit, at, &c.; and so the said Richard saith, that the said Henry (although often requested), hath not kept his said covenant so by him made with the said Richard in this behalf as aforesaid, but hath broken the same, and to keep the same with the said Richard hath hitherto wholly refused, and still refuses, to wit, at, &c. to the damage of the said Richard of five hundred pounds; and therefore, &c.

V. LAWES.

MIDDLESEX, *ff.* Gilbert Sheldon *v.* John Hill: for that whereas by certain articles of agreement made, &c. (make a profit in *curia* of the articles, and then recite the demise and lessees covenant for payment of the rent, and then proceed with a recital of defendant's covenant for securing the payment of the rent, which in this case was to the effect following): And said defendant did, in and by said articles, bind himself to said plaintiff for the true payment of said yearly rent of fifty-two pounds by the said E. W. (the lessee) to said plaintiff, at the times and in the proportions before mentioned for payment, as by said articles of agreement, &c.: by virtue of which said articles of agreement, the said E. W. in the said articles named after the making thereof, to wit, on, &c. entered into all and singular said premises thereby demised with the appurtenances, and became and still is possessed thereof for the said term so to him thereof demised as aforesaid: And said plaintiff further saith, that although he said plaintiff always, from the time of the making of said articles of agreement, hitherto hath well, &c. on his part and behalf, &c. according to the true intent and meaning of said articles, to wit, at, &c.: yet protesting that said defendant hath not, &c. he said plaintiff in fact saith, that twenty-six pounds of the aforesaid rent of fifty-two pounds in said articles mentioned, and reserved for one half-year of said term thereby demised, ended on, &c. to wit, at, &c. became due and in arrear from said E. W. in said articles of agreement mentioned, to said plaintiff, and so continued from thence until and after the end of said twenty-ninth day of, &c. in, &c. contrary to the form and effect of said articles of agreement, and the covenant of said

Covenant for non-payment of rent.

COVENANT ON INDENTURE OF LEASE.

said E. W. in that behalf made as aforesaid, whereby said defendant, according to the tenor and effect of said articles of agreement, and of said covenant of him said defendant in that behalf made as aforesaid, afterwards, and whilst twenty-six pounds of the rent aforesaid was due, owing in arrear, and unpaid, to wit, on, &c. became liable to pay to said plaintiff said twenty-six pounds of the rent aforesaid, so due, &c. to him as aforesaid; whereof the said defendant afterwards, and before the exhibiting, &c. to wit, on, &c. had notice, and was requested by said plaintiff to pay him said twenty-six pounds of the rent aforesaid so due and in arrear to him as aforesaid: But said plaintiff in fact further saith, that said defendant did not then and there pay, nor hath he at any time hitherto since paid said twenty-six pounds of the rent aforesaid so due and in arrear as aforesaid, or any part thereof, to said plaintiff, contrary to the tenor and effect of said articles of agreement, and of the covenant of said defendant in that behalf made as aforesaid, but the same are, and every part thereof is still in arrear and unpaid to said plaintiff, either by said defendant or said E. W. in said articles of agreement mentioned, to wit, at, &c.: And said plaintiff saith, that said defendant hath not kept his said covenant so by him made with said plaintiff as aforesaid (although often requested), but, &c. Damages fifty pounds.

V. LAWES.

This is a precedent under Articles of Leases, by Lessor, &c. Lessee, &c. together, to follow.
 Agreement, but for the reason given, *ante* 439, I have classed all the precedents on

For not repairing between plaintiff and defendant's closes, whereby cattle escaped through into plaintiff's close, and destroyed the grass and corn growing there.

LINCOLNSHIRE, *ff.* William Armstrong v. Robert Halifax: for that whereas said plaintiff, before the several grievances hereafter mentioned, to wit, on, &c. was, and from thence hitherto hath been, and still is lawfully possessed of and in a certain close called Carr-house Place, with the appurtenances, lying and being in the parish of, &c.: and said defendant hath been, and still is possessed of and in a certain close called, &c. lying and being in the parish and county aforesaid, and contiguous and next adjoining to the aforesaid close of said plaintiff: And said plaintiff in fact further saith, that said defendant, and all others the tenants and occupiers of said close of him said defendant for the time being, from time whereof the memory of man is not to the contrary, until the defect thereof hereafter mentioned, have repaired and amended, and have used and been accustomed to repair and amend, and of right ought to have repaired and amended, and said defendant still of right ought to repair and amend the said hedges and fences between said close of said plaintiff, and the close called, &c. of said defendant, as often as occasion hath been, or required to prevent cattle feeding, depasturing, or being in those closes, from erring and escaping out of one into the other of them, and doing damage there; yet said defendant, well knowing the premises aforesaid, but contriving, &c. said plaintiff in the use, possession, and occupation of his aforesaid close, whilst they said plaintiff and defen-

defendant were so respectively possessed as aforesaid, to wit, on, &c. and on divers other days and times between that day and the exhibiting, &c. at, &c. wrongfully and unjustly suffered and permitted the hedges and fences between said close of said plaintiff, and the said close called, &c. of said defendant, to be and continue prostrate, fallen down, ruinous, and in great decay for want of needful and necessary repairing and amending the same, whereby divers cattle, as well of said defendant as of divers other persons to said plaintiff unknown, feeding and depasturing in said close called, &c. of said defendant, on the several days and times aforesaid, through the defects and insufficiency of the said hedges and fences, and for want of due reparation and amendment of the same, erred and escaped out of said close called, &c. of said defendant, unto the aforesaid close of said plaintiff, and eat up, trod down, consumed and spoiled the grass and corn of said plaintiff there then growing and being, to a large value, to the value of twenty pounds of lawful, &c. whereby said plaintiff was greatly injured and damaged, and lost and was deprived of a great part of the profit, benefit, and advantage of his said close, to wit, at, &c. (There was a second Count for other closes.) Plaintiff obtained a verdict.

V. LAWES.

This precedent is in *Tort. See Index.* Torts to Corporeal Hereditaments.

LANCASHIRE, to wit. William St. Clare complains of John Robinson, being, &c.; for that whereas before and at the time of the making of the indenture, and the several surrenders hereafter mentioned, the most noble George duke of Montague, and the right honourable Edward lord Beaulieu were seised in their demesne as of fee, of and in all the manner of Sladebourne, with the appurtenances, at G. in the county of York, whereof the several messuages, buildings, lands, and premises, with the appurtenances in the indenture and surrenders herein after mentioned, particularly described and referred to, then were and still are, and from time immemorial have been parcel, and so being parcel of the said manor during all the time aforesaid, have been and still are demised and demisable by the copy of the court roll of the said manor by the lords of the said manor, or by their steward of the said manor for the time being, to any person or persons willing to take the same in fee simple or otherwise, at the will of the lord, according to the custom of the said manor: And the said Duke and Earl being so seised of the said manor, with the appurtenances, one T. R. and T. A. before and at the time of the making the indenture and surrenders hereafter mentioned, were seised of the said several messuages, &c. with their appurtenances, in their demesne as of fee, at the will of the lord, according to the said custom of the said manor; and being so seised thereof heretofore, to wit, on, &c. at L. in the county of L. aforesaid, it was agreed between the said T. R. and T. A. of the one part, and the said John Robinson of the other part, that the said T. R. and T. A. should by indenture to bear date the same day and year, demise the said

Declaration on a covenant for non-payment of rent, and not repairing at the suit of assignee of reversion of copyhold premises, wherein the several surrenders are set out.

COVENANT.—BY ASSIGNEE OF REVERSION

several messuages, &c. with the appurtenances, to the said J. R. the defendant, for the term and under the terms, covenants, conditions, and provisos in the said indenture to be expressed and contained; whereupon afterwards, to wit, on, &c. at, &c. by a certain indenture then and there made between the said T. R. and T. A. of the one part, and the said defendant of, the other part (one part of which said indenture, sealed with the seal of the said defendant, the said plaintiff now brings here into court, the date whereof is the day and year aforesaid), reciting the said agreement it is witnessed, and the said T. R. and T. A. did thereby for themselves, their executors, and administrators, covenant, promise, and agree to and with the said defendant, his executors, administrators, and assigns, that it should and might be lawful to and for the said defendant, his executors, administrators, and assigns, by and under the payment of the rent, and performance of all and singular the covenants and agreements therein reserved and contained, by and on his and their part and behalf to be paid and performed, peaceably and quietly to have, hold, use, occupy, possess, and enjoy all that messuage, &c. &c. (set out the premises *verbatim* to the end of *reddendum*): And the said defendant did thereby for himself, his executors, administrators, and assigns, covenant, promise, and agree to and with the said T. R. and T. A. their heirs and assigns, in manner following, that is to say, that he the said defendant, his executors, administrators, and assigns, should and would well and truly pay, or cause to be paid to the said T. R. and T. A. their heirs and assigns, the said yearly rent of forty pounds, at the days and times, and in manner and form therein before limited and appointed for the payment thereof, according to the true intent and meaning of the said agreement, except and always reserved out of the said demise unto the said T. R. and T. A. their heirs and assigns, all and all manner of timber trees, &c. then growing, or which should at any time during the continuance of the said demise grow upon the said premises, or any part thereof; and also that he the said defendant, his executors, administrators, and assigns, should and would from time to time, and at all times during the continuance of the said demise, maintain and keep the buildings of or belonging to the said premises in good and sufficient, &c. &c. (go on to the end of the covenant which was to keep the premises in repair, and to cleanse and scour the ditches, for which they, the defendants were to be allowed one pound out of the rent of forty pounds), as by the said indenture, reference being thereto had may more fully and at large appear: And the said plaintiff in fact further saith, that after the making of the said indenture and covenants therein contained, and in pursuance thereof, and to give effect to the same, to wit, on, &c. at, & the said T. R. and T. A. out of court did come before M. R. gentleman, steward of the said manor, and for divers good causes and considerations they the said T. R. and T. A. did then and there surrender into the hands of the lord of the said manor, by the acceptance of the said steward, the said

Surrenders set
out.

messuages, &c. except the said closes or parcels of land, called, &c. and usually occupied therewith, to the intent that the lords of the said manor having thereof seisin by their aforesaid steward of the said manor for their time being, according to the custom of the said manor, should give and grant the said messuages, tenements, lands, and premises, and every part thereof, with the appurtenances, except as aforesaid, unto the said defendant, his executors, administrators, and assigns, to the use and behoof of the said defendant, his executors, administrators, and assigns, for and during and unto the full end and term of fourteen years, to be completed as follows, that is to say, for making husbandry upon the said farm from Candlemas then last past, for the herbage of the said farm from the twenty-fifth day of April then last past, and as to the housing and outhousing from the twelfth day of May then also last past, and fully to be complete and ended; nevertheless at the will of the lord, according to the custom of the said manor, by and under the payment of such rents, and performance of and subject to all and singular such covenants, provisos, and agreements as in the said indenture were and are reserved and contained on the part of the said defendant, his executors, administrators, and assigns, to be paid and performed: And the said plaintiff in fact further says, that afterwards, to wit, on, &c. at the court of, &c. the said George duke of M. and Edward earl of B. lords of the manor of S. aforesaid, so held there for the said manor, according to the custom of the said manor, on, &c. before the said M. R. gentleman, the steward there, the said defendant was in due form of law admitted tenant of the said premises in the said indenture contained, according to the form and effect of the said several surrenders, to wit, at, &c. by virtue of which said grant and surrender he the said defendant duly entered into the said premises in the said surrender mentioned, and thereby surrendered as aforesaid with the appurtenances, and was possessed thereof for the said term to him thereof given and granted as aforesaid, the reversion of the said surrendered premises with their appurtenances belonging to the said T. R. and T. A. their heirs and assigns, to wit, at, &c.; and the said defendant being so possessed of the said surrendered premises, with the appurtenances, and the reversion thereof belonging to the said T. R. and T. A. afterwards, to wit, on, &c. at, &c. came before the said M. R. so being the steward of the said manor of S. as aforesaid, and for divers good causes and considerations they the said T. R. and T. A. did then and there surrender into the hands of the lords of the said manor, by the acceptance of the said steward, the said reversion of the said several messuages, tenements, lands, and premises, to the intent that the lords of the said manor having thereof seisin by their aforesaid steward of the said manor for the time being, according to the custom of the said manor, should give and grant the said messuages and tenements, lands and premises, and thereby surrendered and so intended to be, and every part thereof with the appurtenances, unto the said plaintiff, his heirs, and assigns, to and for the use and behoof of the said plaintiff,

Breaches, non-
payment of
rent,

and not repair-
ing.

tiff, his heirs and assigns for ever, at the will of the lords, according to the custom of the said manor, by and under the rent, suits, and services to the lords of the said manor, and their heirs, therefore due, and of right accustomed: And the said plaintiff further says, that afterwards, to wit, on, &c. at the said court of the said Duke and Earl of the said manor, held there for the said manor, according to the custom of the said manor, on the day and year last aforesaid, before the said M. R. gentleman, steward there, the said plaintiff was in due form of law admitted tenant of the said reversion of the said several surrendered premises, according to the custom of the said manor, to wit, at, &c. by virtue of which said last-mentioned grant the said plaintiff became, and was still is seised in his demesne as of fee of and in the said reversion at the will of the lord according to the custom of the said manor; and the said plaintiff further says, that although he the said plaintiff always from the time of his becoming seised of the said reversion of the said surrendered premises, hitherto hath done, performed, and fulfilled, and kept every thing in the said indenture on the part and behalf of the said plaintiff to be done, performed, fulfilled, and kept; yet protesting that the said plaintiff hath not done, performed, fulfilled, and kept any thing in the said indenture contained on his part and behalf to be done, performed, fulfilled, and kept; in fact the said plaintiff says, that since the said plaintiff became seised of the reversion of the said surrendered premises, to wit, on, &c. at, &c. seventy-eight pounds of the rent aforesaid, for two years of the said term, in the said surrender of indenture mentioned, ending and ended on the said twenty-fourth day of, &c. A. D. 1788, on that day became due and payable from the said defendant to the said plaintiff, yet the said defendant hath not paid the sum of seventy-eight pounds, or any part thereof to the said plaintiff, but to pay the same hath hitherto wholly refused, and still doth refuse, and the same is still wholly due in arrear and unpaid to the said plaintiff, contrary to the form and effect of the said covenant of the said defendant so by him made as aforesaid in that behalf: And the said plaintiff in fact further says, that after he the said plaintiff became seised of the said reversion of the said surrendered premises, to wit, on, &c. for a long time afterwards, to wit, from thence hitherto all and singular the said buildings standing and being in and upon the said granted and surrendered premises, were ruinous and in great decay, for want of needful and necessary repairing and amending thereof, in the thatching and glazing thereof, which said premises so being out of repair and in decay for want of needful and necessary repairing and amending, he the said defendant suffered and permitted so to be and continue for want of needful and necessary repairing and amending, for and during all the time last aforesaid; and the highways upon and over the said demised premises, on, &c. and from thence during all the time aforesaid were, and by the said defendant were suffered and permitted to be and continue out of repair and ruinous, bad, soft, miry, rotten, foundrous, and unpassable
for

for want of needful and necessary repairing and amendment, and in consequence thereof the adjoining lands on each side of the said ways became eat up, broken, laid waste, and rendered barren and unprofitable by the feet of cattle, carts, and carriages of divers of his majesty's subjects who had a right of passing along, and using the said several highways, and the hedges, ditches, and fences upon, of, and belonging to the said demised premises on, &c. were and from thence for a long time, to wit, hitherto have by the mere default and negligence of the said defendant been, and continued, and have been suffered and permitted to be and remain ruinous, broken down, filled up, and in great decay for want of needful and necessary repairing, cleansing and amending, and particularly by reason of such neglect, and want of repairing of and in the hedges, fences, and ditches of and belonging to, and fencing in a certain orchard in and part and parcel of the said demised and surrendered premises, divers cattle have from time to time, during all the time aforesaid, strayed and got into the said orchard, and have pulled down, broke down, injured, spoiled, and destroyed divers fruit trees, &c. growing upon and belonging to the said demised premises, contrary to the tenor and effect of the said indenture, and of the covenants of the said defendants in that behalf made as aforesaid: And so the plaintiff says, that the said defendant, although often requested, hath not kept with the said plaintiff the said covenants so made by the said defendant with the said T. R. and T. A. and their assigns, but hath broken the same, and hitherto wholly refused, and still refuses to keep the same; wherefore the said plaintiff saith that he is injured, and hath sustained damages to the value of five hundred pounds, for which he brings his suit, &c.

T. BARROW,

SOMERSETSHIRE, *ff.* E. B. F. F. and F. his wife, complain of C. D. being, &c. of a plea of breach of covenant; for that whereas by a certain indenture made on, &c. to wit, at, &c. between the said E. and one Thomas Smith, of, &c. now deceased, and the said F. the then wife of the said T. S. and now the wife of the said F. F. of the one part, and the said C. of the other part, one part, &c. (profert of the deed), they the said E. and the said T. S. in his lifetime, and the said F. for the considerations therein mentioned, did demise unto the said C. his executors, administrators, and assigns, all that piece or parcel of ground in a new street then called, or then intended to be called Gerard-street, situate, lying, and being in the parish of St. James, in the city of Bath, and also all that messuage or tenement, and dwelling-house thereon, or on some part or parts thereof then erecting and building by the said C. with the appurtenances, to hold the same unto the said C. his executors, administrators, and assigns, from the twenty-fourth of June then next ensuing the date of the said indenture, for the term of ninety-eight years from thence next ensuing; yielding therefore yearly unto the said E. B. J. S. and Francis,

Declaration by surviving lessors, and the aforesaid husband of one of them, against lessee for not repairing old buildings, and new ones built by defendant under a covenant for that purpose, but taking down part of the premises, and thereby damaging the rest.

BY (SURVIVING) LESSOR.—NOT REPAIRING.

Francis, and unto the survivors and survivor of them, and unto the executors, administrators, and assigns of such survivor, the rent or sum of five pounds five shillings of lawful, &c.; and the said C. for himself, his executors, administrators, and assigns, did covenant to and with the said E. B. S. and F. the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, by the said indenture, that he the said C. his executors, administrators, and assigns, should and would during the said term, as often as occasion should require, at his and their costs and charges sufficiently repair, and maintain and keep the said messuage, tenement, or dwelling house, messuages, tenements, or dwelling houses and premises, with the appurtenances, when so erected and built, in, by, and with all manner of needful and necessary reparations whatsoever, as by the said indenture, amongst other things, relation being thereto had, may more fully and at large appear; by virtue of which said indenture the said C. afterwards, to wit, on, &c. entered into and upon all and singular the said demised premises, with the appurtenances, and was and from thence hitherto hath been and still is thereof possessed for the said term to him thereof demised: And the said E. F. and F. in fact say, that the said T. S. one of the lessors named in the said in-part recited indenture, after the making of the said in-part recited indenture, to wit, on, &c. died, leaving the said F. and the said E. him surviving, to wit, at, &c.; and the said plaintiffs in fact further say, that after the death of the said T. S. as aforesaid, and before the exhibiting, &c. to wit, on, &c. at, &c. the said F. intermarried with and took to husband the said F. to wit, at, &c. and although the said E. T. S. and F. in the lifetime of the said T. S. and the said E. and F. after the decease of the said T. S. and whilst the said F. was sole, and before her intermarriage with the said F.; and the said plaintiff since the intermarriage of the said F. with the said F. as aforesaid, have always from the time of the making of the said in part recited indenture of lease, hitherto well and truly performed, &c. yet protesting, &c. they the said plaintiffs in fact say, that the said C. did not, nor hath from time to time, and at all times during the said term by the said in-part recited indenture, demised, and whilst he was and continued so possessed of the said demised premises, with the appurtenances, as tenant thereof, under and by virtue of the said in-part recited indenture, when, and as often as occasion did require and hath required, well or sufficiently repair, maintain, or keep the said messuage, tenement, or dwelling house so as aforesaid erected and built on the said demised premises, at the time of the making the said in-part recited indenture of lease, or the messuages, &c. afterwards erected and built on the said demised premises, in pursuance of a covenant of the said C. in the said in-part recited indenture contained, or any of them, or any part of the said premises so as aforesaid demised to the said C. in and by the said in-part recited indenture, in, by, and with all manner of needful and necessary reparations and amendments whatsoever, to the tenor and effect

fact, true intent and meaning of the said indenture, and of the covenant of the said C. by him made in that behalf as aforesaid; but that the said C. afterwards and whilst he was and continued possessed of the said demised premises, with the appurtenances, under and by virtue of the said in-part recited indenture, and after the death of the said T. S. and after the said intermarriage of the said F. with the said F. as aforesaid, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting, &c. at, &c. without the leave or license, and against the will of the said plaintiffs, broke down, &c. a great part, to wit, five hundred square feet of the thatch, &c. of and belonging to the aforesaid messuage, so as aforesaid erected and built in the said demised premises, and being of a large value, to wit, of, &c. and took and carried away the same and converted, &c. and also then and there in those several days and times aforesaid, at, &c. without the leave, &c. broke down, &c. the walls of and belonging to the said messuages or dwelling houses, and part or parcel of the said demised premises, with the appurtenances, and took, &c. thereof coming, of a large value, &c.; and took, &c. and converted, &c. whereby the said messuages or dwelling houses of and belonging to the said demised premises, with the appurtenances, and part and parcel thereof became and were laid open, ruinous, and wholly out of repair, contrary, &c.: And the said plaintiffs in fact further say, that the said C. hath suffered and permitted the said messuages, &c. to remain and continue so laid open, &c. in manner and by means aforesaid, from the time when the same so as aforesaid became and were laid open, &c. hitherto, to wit, at, &c. contrary to the tenor, &c.: and so the said plaintiffs in fact say, &c. (common conclusion in covenant); damages, &c.; Pledges, &c.

C. RUNNINGTON.

LONDON, to wit. Mary Troutback, widow, complains of John Murray and John Rivington, being, &c. in a plea of breach of covenant: for that whereas by a certain indenture, made on, &c. at, &c. between the said Mary (by the name, &c.) of the one part, and the said Thomas Tuckey (by the name, &c.) of the other part (one part, &c.) she the said Mary, for the considerations therein mentioned, did demise, lease, let, and to farm let unto the said T. T. all that messuage, &c. &c. (set out the indenture) as by the said indenture, relation being thereunto had, amongst other things more fully appears; by virtue of which said demise he the said T. T. afterwards, to wit, on, &c. at, &c. entered into all and singular the said demised premises, with the appurtenances in the said indenture mentioned, and became and was possessed thereof for the said sum to him thereof demised as aforesaid; and being so possessed thereof afterwards, to wit, on, &c. all the estate, right, title, interest, term of years then to come and unexpired, property, claim, and demand whatsoever of him said T. T. of and in and to the said demised premises, with the appurtenances,

Declaration by
lessor against as-
signee of lessee,
for non pay-
ment of rent,
and for non per-
formance of re-
pairs, &c.

tenances, by assignment thereof then and there duly made, came to and vested in the said J. M. and J. R. afterwards, to wit, on, &c.; by virtue of which said assignment they the said J. M. and J. R. afterwards, to wit, on, &c. entered into and upon all and singular the said demised premises, with the appurtenances, and became and were thereof possessed for the rest, residue, and remainder of the said term of twenty-one years therein then to come and unexpired: And the said Mary in fact further says, that after the said J. M. and J. R. became and were so possessed of the said demised premises, with the appurtenances, by assignment thereof as aforesaid, to wit, on, &c. twenty-eight pounds of the rent aforesaid, for one year of the said demised term, elapsed since the said J. M. and J. R. so became possessed of the said demised premises by assignment as aforesaid, on that day in the year aforesaid, became and were due, owing in arrear, and unpaid from the said J. M. and J. R. as assignees as aforesaid to the said Mary, and the same, and every part thereof, still remains wholly in arrear and unpaid from the said J. M. and J. R. to the said M. contrary to the form and effect of the said indenture, and of the covenant of the said T. T. and his assigns in that behalf made as aforesaid: And the said Mary further saith, that after the said J. M. and J. R. so became assignees of the said demised premises as aforesaid, and during the continuance of the aforesaid term, to wit, on, &c. the said demised messuage, &c. in the said indenture mentioned, became and was greatly ruinous, &c. for want of needful and necessary reparation and amendment of the same in the roof, &c. and in other parts thereof; yet the said J. M. and J. R. have not repaired and amended the same, or any part thereof; but on the contrary thereof have suffered and permitted the same, and every part thereof to remain and continue so ruinous, &c. for want of needful and necessary reparation and amendment of the same from thence hitherto, to wit, at, &c. contrary to the form and effect of the aforesaid indenture, and of the said covenant of the said T. T. and his assigns in that behalf made as aforesaid; and so the said Mary says, that the said J. M. and J. R. have not, since they so became assignees of the said demised premises as aforesaid, kept with her the covenant made between her the said T. T. and his assigns, in manner and form aforesaid, but have broken the same, to the said Mary her damage of one hundred pounds, &c. Suit, &c. W. WALTON.

Declaration by surviving executor of lessor, who had a term of years, against assignee of lessee, for not repairing the premises, and leaving them out of repair.

CORNWALL, ss. Nicholas Funney the younger, late of, &c. assignee of N. Funney the elder, was summoned to answer unto John Higman, surviving executor of the last will and testament of Joseph Chadwell deceased, in a plea that he keep with the said J. H. the covenants made between the said J. C. in his lifetime, and the said N. F. the elder, according to the force, form, and effect of a certain indenture thereof made between them, &c.; and thereupon, &c. that whereas by a certain indenture made

made on, &c. at, &c. between the said J. C. in his lifetime (by the name, &c.) of the one part, and the said N. F. the elder (by the name of, &c.) of the other part (the counterpart of, &c.) reciting that whereas, &c. he the said J. C. in his lifetime did demise, &c. &c. (set forth the demise, *habendum reddendum*, and covenants upon which the action is brought, then proceed as follows), as by the said indenture brought here into court, relation being thereunto had, &c.: And the said plaintiff further says, that he the said J. C. at the time of the making the said demise, was possessed of the said demised premises for the residue and remainder of a certain long term of years, whereof thirty years and more were then to come and unexpired; and that by virtue of the said demise he the said N. F. the elder afterwards, to wit, on, &c. entered into the said demised premises, with the appurtenances (except as before excepted), and became and was possessed thereof for the said term to him thereof demised as aforesaid; the reversion thereof, with the appurtenances belonging as aforesaid, he the said J. C. afterwards, to wit, on, &c. duly made his last will and testament and in writing, and thereby then and there constituted and appointed John Cole and plaintiff joint executors thereof; and afterwards, to wit, on, &c. at, &c. died possessed of such his said estate of and in the said reversion, with the appurtenances, after whose death the said J. C. and plaintiff, to wit, on, &c. duly proved the said will, and took upon themselves the burthen of the execution thereof; and the said J. C. is since dead: And the said plaintiff hath since survived him, to wit, at, &c. and by reason thereof the said plaintiff became and was, and still is possessed of the said reversion, with the appurtenances; and being so possessed thereof, and the said N. F. being so possessed of and in the said demised premises, with the appurtenances (except, &c.) afterwards, to wit, on, &c. all the estate, right, title, interest, term of years then to come and unexpired, property, claim and demand whatsoever of the said N. F. the lessee of and into the said demised premises, with the appurtenances (except, &c.) by assignment thereof then and there duly made, lawfully came to and vested in the said N. F. the younger, the now defendant; by means whereof the said N. F. the younger, afterwards, to wit, on, &c. at, &c. entered into the said demised and assigned premises, with the appurtenances (except, &c.), and became and was thereof possessed until and upon the first day of, &c. on which said day the said term of years mentioned in the said indenture of demise was duly ended and determined, and on which day the said N. F. the younger yielded and surrendered up the possession of the said demised and assigned premises, with the appurtenances, unto the said plaintiff; and although the said J. C. in his lifetime, always from the time of the making of the said indenture of demise until the time of his death, and the said J. C. and plaintiff, from the time of the decease of the said J. C. during the lifetime of the said J. C. and the said plaintiff, since the death of the said J. C. hitherto hath well and truly performed and fulfilled the
said

COVENANT BY LESSOR AGAINST

said indenture in all things therein contained on the part and behalf of the lessor and his executors to be performed and fulfilled; yet protesting that the said N. F. the younger, the said assignee, hath not performed or fulfilled any thing in the said indenture contained on the part and behalf of the said lessee and his assigns to be performed or fulfilled: But in fact the said plaintiff says, that on, &c. and for the space of two years and more then last elapsed, the said demised premises, with the appurtenances in the said indenture mentioned, were ruinous and in great decay for want of needful and necessary amending thereof in the covering, tiling, &c. and in the windows, &c. and in every other part and particular thereof, and the hedges, &c. of and belonging to the said demised premises were, during all that time, ruinous, prostrate, fallen down, and in great decay for want of needful and necessary repairing and amending thereof, and the ditches of and belonging to the said demised premises, with the appurtenances, were, during all that time, foul, ruinous, filled up with mire, and out of repair for want of cleaning and scouring thereof, all which said several premises, so being ruinous and out of repair, he the said N. F. the younger suffered and permitted to be and continue so out of repair, and to want necessary repairs for and during all the time aforesaid, contrary to the form and effect of the said indenture, and of the aforesaid covenant of the said N. F. the elder so made in that behalf as aforesaid; and at the end of the said term of twenty-one years, to wit, on, &c. at, &c. yielded up the said demised premises, with the appurtenances, unto the said plaintiff, so ruinous and out of repair, contrary to the form, &c. of the said N. F. the elder, so made in this behalf as aforesaid; and so the said plaintiff says, that the said N. F. the younger (although often requested) hath not, since he was so assignee of the said demised premises as aforesaid, kept the covenant aforesaid so made between the said J. C. and N. F. the elder, as aforesaid, according to the form, &c. so made between them as aforesaid, but hath broken the same, and to keep the same with the said plaintiff hath hitherto wholly refused, and still does refuse. Damage forty pounds. And he brings here into court the letters testamentary of the said J. C. which sufficiently prove to the court here that the said plaintiff is surviving executor of the last will and testament of said J. C. and has administration thereof, &c. &c. *Drawn by W. WARREN,*

Declaration by lessor against assignees of the lessee, of a term of six years, six months, and eighty five days, at an annual sum payable quarterly for the six years, and specific sums for the six months and odd days, assigning separate breaches for the non payment of a quarter's rent out of the six years, the sums covenanted to be paid for the six months and odd days, and also of additional rent of forty shillings an acre, payable upon defendant's sowing some particular land with corn, and other land with barley, during the last four years of the term.

SURRY, ff. George Russel, esquire, complains of Robert Hawkes and Francis Okines, being, &c. of a plea of breach of covenant: for that whereas by a certain indenture made on, &c. to wit, at, &c. between the said George (by the name of, &c.) of the one part, and one Robert Board (by the name, &c.) of the other part (one part, &c.) he the said George, for the considerations

therein

therein mentioned did demise, lease, and to farm let unto the said R. B. certain premises in the said indenture particularly mentioned and described, to have and to hold the same unto the said R. B. his executors, administrators, and assigns, from, &c. then last past, for and during, and unto the full end and term of six years, six calendar months, and eighty-six days from thence next ensuing, and fully to be complete and ended, yielding and paying unto the said George, his executors, administrators, and assigns, for the first six years of the said term, the yearly rent or sum of three hundred and twenty pounds, by equal quarterly payments, on the twenty-fifth day, &c. the first payment to be made on the twenty-fifth day of, &c. then next ensuing the date thereof, and also yielding and paying to the said George, his executors, &c. for the last six calendar months, the rent or sum of one hundred and sixty pounds of like lawful, &c. on the last day thereof, and for the last eighty-five days of the said term the rent or sum of eighty pounds of like lawful, &c. on the last day thereof; and the said R. B. did thereby covenant, promise, and agree to, and with the said George (amongst other things), that he the said R. B. his executors, &c. should and would well and truly pay, or cause to be paid unto the said George, his executors, &c. the said yearly rent, and the several other rents in manner and on the several days and times thereinbefore mentioned, according to the true intent and meaning of the said indenture; and further, that in case any of the fields or pieces or parcels of land therein and hereinafter mentioned, or any part thereof, that is to say, the several fields called the Great Meadow, the Orchard Field, the Clay Pits, the Little Many Fields, and the Ladland Hill Field, part of the premises thereinbefore mentioned, containing in the whole by estimation fifty acres or thereabouts, should be thereafter ploughed, broken up, or sown with any sort of grain or corn during the last four years of the term thereby demised, that then he the said R. B. his executors, &c. should and would pay, or cause to be paid unto the said George, &c. the sum of forty shillings of lawful, &c. for every acre, and so in proportion for any greater or less quantity than an acre of the said premises, over and above the rent thereinbefore reserved to be paid, which should be so ploughed, broken up, or sown within the last four years of the said term thereby demised, contrary to the true intent and meaning of the said indenture, to be paid on such of the feast-days aforesaid, as should first and next happen to come next after such ploughing up or sowing as aforesaid, as by the said indenture, relation being thereunto had, will, amongst other things, more fully and at large appear: by force and virtue of which said indenture the said R. B. afterwards, to wit, on, &c. in, &c. entered into all and singular the said demised premises, with the appurtenances, and became and was possessed thereof for the said term so to him thereof demised (the reversion thereof, with the appurtenances, after the expiration of the same term, belonging to the said George), to wit, at, &c.: And the said George in fact further saith, that afterwards,

wards, to wit, on, &c. to wit, at, &c. all the estate, right, title, interest, term of years then to come and unexpired, property, claim, and demand whatsoever of the said R. B. of and into the said demised premises, with the appurtenances, by assignment thereof duly made, lawfully came to and vested in the said R. H. and F. O. whereby they the said R. H. and F. O. then and there entered into and upon all and singular the said demised premises, with the appurtenances, and became and were possessed thereof, and continued so possessed thereof from thence until and at the expiration of the said term by the said indenture granted, to wit, at, &c. ; and although the said George hath always, from the time of making the said indenture until and at the expiration of the said term, well and truly, &c. to wit, at, &c. ; yet protesting that the said R. H. and F. O. after the said assignment so made as aforesaid, did not perform, &c. on their parts and behalves, as assignees of the said premises, to be performed and fulfilled according to the tenor, &c. : the said George in fact saith, that after the making of the said indenture, and during the said term thereby granted, and whilst the said R. H. and F. O. were so possessed of the said demised premises, with the appurtenances as aforesaid, to wit, on, &c. at, &c. a large sum of money, to wit, the sum of eighty pounds of the rent aforesaid, for one quarter of a year of the said term, ending on that day in the year last aforesaid, became due and owing, and from thence hitherto hath been, and still is in arrear and unpaid from the said R. H. and F. O. to the said George, contrary to the tenor, &c. and of the said covenant of said R. B. by him in that behalf made for himself and his assigns with the said George in manner and form aforesaid, to wit, at, &c. : And the said George in fact further saith, that after the making the said indenture, and during the said term thereby granted, and whilst the said R. H. and F. O. were so possessed of the said demised premises with the appurtenances as aforesaid, to wit, on, &c. at, &c. a large sum of money, to wit, the sum of one hundred and sixty pounds of the rent aforesaid, for the last six calendar months of the said term, ending on that day in the year last aforesaid, became due and owing, and from thence, &c. (contrary to the tenor, &c. as before) : And the said George in fact further saith, that after the making of the said indenture, and during the said term thereby granted, and whilst the said R. H. and F. O. were so possessed of the said demised premises, with the appurtenances as aforesaid, to wit, on, &c. a large sum of money, to wit, the sum of eighty pounds of the rent aforesaid, for the last eighty-five days of the said term, ending on that day, &c. &c. (as before) : And the said George in fact further saith, that although the said R. H. and F. O. after the making the said indenture, and during the last four years of the term thereby granted, and whilst they the said R. H. and F. O. were so possessed of the said demised premises, with the appurtenances as aforesaid, to wit, on, &c. did sow with corn (that is to say, with *wheat*), divers, to wit, eleven acres, part of the fields or pieces or parcels of land hereinbefore

fore mentioned; whereby, and according to the tenor and effect of the said indenture, and of the covenant of the said R. B. by him in that behalf made for himself and his assigns, with the said George as aforesaid, they the said R. H. and F. O. afterwards, to wit, on, &c. (being such of the feast-days as first and next happened to come after such sowing with corn as aforesaid), became liable to pay to the said George the sum of twenty-two pounds of lawful, &c. being at and after the rate of forty shillings of lawful, &c. for every acre of the said premises so sown with corn as aforesaid; yet the said R. H. and F. O. (although often requested) have not, nor hath either of them paid the said sum of twenty-two pounds, or any part thereof, to the said George, but have, and each of them hath hitherto wholly refused and neglected so to do, and the same and every part thereof still remains and is wholly due and owing from the said R. H. and F. O. to the said George, contrary to the tenor, &c. &c.: And the said George in fact further saith, &c. &c. [same as the last breach to the end, only instead of *wheat* say *barley*, and the number of acres *five*]; and so the said George in fact saith, that the said R. H. and F. O. (although often requested, &c.) have not, nor hath either of them kept with the said George the said covenant so made by the said R. B. for himself and his assigns, with the said George in manner and form aforesaid, but have broken the same, and to keep the same with the said George have and each of them hath hitherto wholly refused, and still do, and each of them doth refuse, to the damage of the said G. of five hundred pounds, and therefore he brings suit, &c.

Drawn by MR. TIDD.

JAMES MACKAY, executor, &c. of James Durnoe, deceased, *against* ROBERT MACKRETH, ESQUIRE (having privilege, &c.), administrator, &c. of Sir. J. Shelly, baronet, deceased, and who in his lifetime, and at, &c. was assignee of his late father, Sir J. S. also deceased, in a plea of breach of covenant.

MIDDLESEX. For that whereas by a certain indenture made, &c. at, &c. between the honourable Thomas Hervey, of the one part, and the aforesaid J. Durnoe, of the other part, (one part, &c.) the said Thomas Hervey, for the considerations in the said indenture mentioned, did demise, lease, set, and to farm let, unto the said J. Durnoe (amongst other premises in the said indenture particularly mentioned and described) a certain messuage, &c. with the appurtenances, &c. &c. to have and to hold the said messuage, &c. with the appurtenances, unto the said J. D. his executors, administrators, and assigns, from the feast day of, &c. then last past, for and during the term of twenty-one years from thence next ensuing, and fully to be complete and ended, at and under certain repts and covenants in the said indenture mentioned; and the said T. H. did, in and by the said indenture, for himself, the lease; 1st, for rent incurred; 2dly, for giving up the premises out of repair upon the determination of the term, at the expiration of the first fourteen years, in pursuance of the *proviso*.

his

his executors, administrators, and assigns, covenant, promise, and agree to and with the said J. D. his executors, &c. that in case the said J. D. his executors, &c. or any of them should be desirous of taking a further lease of the premises by the said indenture demised, for a further term of twenty-one years; to commence upon the expiration of the said term of twenty-one years by the said indenture granted, and should signify his or their desire in writing six months before the expiration of the said term of twenty-one years by the said indenture granted unto the said T. H. his executors, &c. he the said T. H. his executors, &c. should and would, at such request, cost, and charges of the said J. D. his executors, &c. demise and grant the said messuage, &c. with the appurtenances, to the said J. D. his executors, &c. for a further term of twenty-one years, to commence from the expiration of the term of twenty-one years by the said indenture granted, subject to the payment of such rent, and the performance of such covenants, &c. as were and are in the said indenture mentioned and contained on the part and behalf of the said J. D. his executors, &c. to be paid, kept, and performed, he the said J. D. his executors, &c. at the same time executing a counter-part of such further lease (as by the said indenture, &c.) ; by virtue of which demise, he the said J. D. in his lifetime, to wit, on, &c. entered into, and became and was possessed of the said messuage or dwelling-house and premises so to him demised as aforesaid, for the said term of twenty-one years in the said indenture mentioned, together with such right of renewal of the said term as aforesaid : And the said plaintiff in fact further saith, that the said J. D. being so possessed of the said demised premises for the said term, so to him thereof demised as aforesaid, and having such right of renewal of the said term as aforesaid, and being desirous of taking a further lease of the said premises by the said indenture demised to him as aforesaid, for a further term of twenty-one years, by the said indenture granted upon the terms in that respect specified and agreed upon in the said indenture, he the said J. D. according to the terms of the said indenture, did, six months before the expiration of the said term, by the said indenture granted unto him by the said T. H. to wit, on, &c. at, &c. signify unto the said T. H. such his the said J. D.'s desire in writing, to have such further lease of the said premises so to him demised as aforesaid, and did require and demand such further lease of the said premises according to the said right or power of renewal in the aforesaid indenture mentioned : And the said plaintiff in fact further saith, that the said J. D. having such right to renewal of the said lease, so to him granted as aforesaid, and having made such election to have the same renewed as aforesaid, and being still desirous of such renewal, and being in possession of the said premises in virtue of his said right of renewal, he the said J. D. afterwards, to wit, on, &c. at, &c. by a certain indenture then and there made between the said J. D. of the one part, and the said Sir J. Shelly, the father of the said Sir J. S. herein before mentioned, of the other
part

part (one part, &c.); and for the considerations in the said last-mentioned indenture contained, did demise unto the said Sir J. S. the father, his executors, &c. the aforesaid messuage, &c. to have and to hold the same with the appurtenances thereunto belonging, unto the said Sir J. S. the father, his executors, &c. from the feast of, &c. then last past, for and during, and unto the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended, subject, nevertheless, to a certain proviso in the said last-mentioned indenture contained, for vacating and determining the said last-mentioned demise at any of the times therein mentioned; yielding and paying, &c. [here follows covenants to pay the rent and to repair the premises, except the roof and tiling, and to leave them in repair]; and the said J. D. did, by the said last-mentioned indenture, for himself, his executors, &c. covenant, promise, and agree (amongst other things) that if the said Sir J. S. the father, his executors, &c. should be inclined and desirous to quit and deliver up the possession of the said messuage, &c. did, by the said last-mentioned indenture intended to be let and to vacate the remaining part of the term thereby intended to be demised, at the end of the first seven, eleven, or fourteen years thereof; and of such his or their intention or desire should give or leave six months previous notice in writing to or for the said J. D. his executors, &c. at his or their usual place of abode in London, or elsewhere in the county of Middlesex, that then, and from and after the expiration of six calendar months after such notice thereof given or left as aforesaid, the said last-mentioned indenture of lease should become void or null to all intents and purposes, and the remainder of the term thereby granted, cease, and determine, as if the said indenture had never been made, executed, nor entered into, as by the said last-mentioned indenture, &c. &c.; by virtue of which said last mentioned demise, Sir J. S. the father entered into the said (1) *several premises by the said last-mentioned indenture demised as aforesaid*, with the appurtenances, and became and was possessed thereof *under and by virtue of the said last-mentioned indenture* for the said term so to him thereof demised as aforesaid, and afterwards, to wit, on, &c. all the estate, right, &c. whatsoever of the said Sir J. S. the father, of, in, to, or out of the said (2) *premises to him demised as aforesaid*, with the appurtenances, *by assignment thereof then and there lawfully made*, came to and vested in the said Sir J. S. the son, by (3) *virtue whereof the said Sir J. S. the son, in his lifetime, to wit, on, &c. entered into the said (4) premises, with the appurtenances, and became and was possessed thereof for the then residue of the said last-mentioned term (5): And the said plaintiff in fact further saith, that the said J. D. having such right of renewal of the said term of years as aforesaid, be the said J. D. continued entitled to such renewal of the said term, and afterwards, and in the lifetime of the said Sir J. S. the son, to wit, at, &c. died so entitled*, the said last-mentioned demise to the said J. D. being still continuing, he the said J. D. afterwards,"

having

having first duly made his last will and testament in writing, and thereof appointed the said plaintiff executor: And the said plaintiff in fact further saith, that after the death of the said J. D. to wit, on, &c. he the said plaintiff duly proved the said will of the said J. D. and took upon himself the burthen and execution thereof, and thereby then and there became and was (6) possessed of and entitled unto the said right of renewal of the said term of twenty-one years and all (7) other the interest of the said J. D. of and in, or to the said (8) premises so to him demised as aforesaid, with the appurtenances, at the time of his death, under the aforesaid indenture of lease thereof to him the said J. D. whereof the said Sir J. S. the son, afterwards, to wit, on, &c. at, &c. had notice: And the said plaintiff in fact further saith, (9) *be the said plaintiff being such executor to the said J. D. as aforesaid, and having such right of renewal of said term as aforesaid, and the said Sir J. S. the son being so possessed of the said premises so to him assigned as aforesaid, he the said Sir J. S. the son, in pursuance of the power or agreement for that purpose in the said indenture of lease to the said Sir J. S. the father mentioned, did, six calendar months before the expiration of the first fourteen years of the said term of twenty-one years, so demised to the said Sir J. S. the father as aforesaid, to wit, on, &c. at, &c. give unto the said plaintiff, as such executor as aforesaid, notice in writing, that the said Sir J. S. the son should and would quit and deliver up possession of the said messuage or dwelling-house by the said last-mentioned indenture demised as aforesaid, and vacate the remaining part of the term thereby demised at Christmas-day then next, according to the power and agreement for that purpose in the said last-mentioned indenture contained: And the said plaintiff in fact further saith, that the said Sir J. S. the son having given such notice to determine the said last-mentioned lease as aforesaid, the said defendant, as such administrator as aforesaid, did, upon said Christmas-day after giving the same as aforesaid, that is to say, upon the twenty-fifth day of December 1783, to wit, at, &c. quit and deliver up to the said plaintiff, as such executor as aforesaid, the possession of the said premises so assigned to the said Sir J. S. the son, and did then and there vacate and determine the said term of twenty-one years so thereof demised as aforesaid, as to the then remaining part of the said term, according to the tenor and effect of the aforesaid notice, and the proviso or agreement for that purpose in the said last-mentioned indenture: And the said plaintiff in fact further saith, that the said term for twenty-one years did thereupon accordingly cease and determine; and although no further lease of the said premises, so demised to the said J. D. as aforesaid, hath as yet been granted by the said T. H. yet the said plaintiff, as such executor as aforesaid, is still entitled to the said renewal of the said term; and the said J. D. in his lifetime, from the time of the expiration of the said term of twenty-one years so to him demised as aforesaid; and the said plaintiff, as such executor as aforesaid, since his death, has always since continued and remained tenant to the said T. H. his executors, administrators, and assigns of the aforesaid demised premises,*

(6) "and still is"

(7) "the estate and"

(8) "last demised"

(9) "that the said demise, so made to J. D. and his executors, as last aforesaid, is still continuing, and that the said plaintiff, and the said Sir J. S. the son, being so respectively possessed and entitled as aforesaid,"

premises, under and by virtue of the said right of renewal and of the said agreement for such further lease as aforesaid, to wit, at, &c. : And the said plaintiff in fact further saith, that although the said J. D. in his lifetime, and the said plaintiff, since the death of the said J. D. have severally performed and fulfilled all things in the said indenture of demise between the said J. D. and Sir J. S. the father deceased, contained on the part and behalf of the said J. D. his executors and administrators, to be performed and fulfilled; yet protesting that the said Sir J. S. the son, in his lifetime, after the said (10) premises by that indenture demised so came to him by assignment as aforesaid, and the said defendant, administrator as aforesaid, after his death, did not, nor did either of them perform and fulfil any thing in the said indenture contained on the part and behalf of the said Sir J. S. the father and his assigns to be performed and fulfilled; in fact the said plaintiff saith, that upon the said determination of the said demise so made to the said Sir J. S. the father as aforesaid, that is to say, upon the said twenty-fifth day of December, A. D. 1783, being the feast-day of, &c. at, &c. two hundred and sixteen pounds of the said yearly rent of ninety-six pounds for two years and one quarter of a year of the said term so demised to the said Sir J. S. the father as aforesaid, beginning after the (11) aforesaid assignment to the said Sir J. S. the son, and ending on the day and year last aforesaid, became and were due and owing and payable, and still are in arrear and unpaid to the said plaintiff, as such executor as aforesaid, contrary to the (12) tenor and effect of the said last-mentioned indenture, and of the said covenant of the said Sir J. S. the father in that behalf made as aforesaid, to wit, at, &c. : And the said plaintiff in fact further saith, that the said Sir J. S. the son did not, after the said premises so demised to his father, come to him the said Sir J. S. the son as aforesaid, at his own proper cost and charges, well and sufficiently support, maintain, sustain, &c. or cause to be supported, &c. the said messuage, &c. with all manner of necessary and needful reparations and amendments, pavings, &c. as often as need required, nor were the said premises, or any part thereof, left, surrendered, or yielded up unto the said plaintiff as such executor as aforesaid, at or upon the aforesaid determination of the said term so thereof demised to the said Sir J. S. the father as aforesaid, so well and sufficiently amended, repaired, glazed, &c. according to the tenor and effect of the said indenture, and of the said covenant of the said Sir J. S. the father in that behalf made as aforesaid, but (13) on the contrary thereof, he the said Sir J. S. the son, in his lifetime, after the said premises came to him by assignment as aforesaid, and the said defendant, administrator as aforesaid, after the death of the said Sir J. S. the son, to wit, on, &c. and from thence until the determination of the said term of twenty-one years so demised to the said Sir J. S. the father as aforesaid, suffered and permitted the said messuage, &c. with the appurtenances, to be greatly out of repair, ruinous, and in decay, for want of necessary repairing, amending, paving, and

(10) "last-mentioned demised"

(11) "said last-mentioned"

(12) "form"

(13) "wholly neglected and refused to do, and"

Vol. III. H h glazing

(14) "form"

2d Count, al-
 ledging the lessor to have been
 possessed under
 a demise to him
 and his execu-
 tors from year
 to year, and
 such demise is
 still existing,
 &c."

glazing thereof, in other and different parts and places than in the roof and tiling thereof, that is to say, in the walls, doors, &c. &c. &c. and in various other parts thereof (other than the roof and tiling thereof), and all the pumps, drains, &c. &c. to be foul, filled, and choaked up with sand, mire, and filth, for want of needful and necessary emptying, cleansing, and scouring thereof; and upon and at the aforesaid determination of the said term so thereof demised to the said Sir J. S. the father as aforesaid, he the said defendant, administrator as aforesaid, left, surrendered, and yielded up the said premises unto him the said plaintiff, executor as aforesaid, so out of repair, ruinous, and in great decay as aforesaid, for want of necessary repairing, amending, paving, glazing, and cleansing thereof, contrary to the (14) *tenor* and effect, true intent and meaning of the said last-mentioned indenture, and of the covenant of the said Sir J. S. the father, in that behalf made as aforesaid, to wit, at, &c. And whereas, before the making the indenture hereinbefore mentioned, to wit, on, &c. at, &c. the said T. H. hereinafter mentioned, demised (amongst other premises) the said messuage, &c. in the said indenture hereinafter mentioned, with the appurtenances, to the said J. D. deceased, his executors, administrators, and assigns, to hold the same unto the said J. D. his executors, administrators, and assigns, from the feast of, &c. in the same year, for one year from thence next ensuing, and fully to be complete and ended, and so from year to year, for so long a time as it should please the said T. H. and the said J. D. his executors, administrators, and assigns, by virtue of which said demise he the said J. D. entered into the said premises so to him demised as last aforesaid, with the appurtenances, and became and was possessed thereof, and being so thereof possessed, by a certain other indenture, made at, &c. on, &c. between the said J. D. of the one part, and the said Sir J. S. the father, hereinbefore mentioned, of the other part (*profert in curia*); he the said J. D. for the considerations therein mentioned, did demise, set, and to farm let unto the said Sir J. S. the father, his administrators and assigns, all that messuage, &c. by the said last-mentioned indenture demised, situate in, &c. and in the said last-mentioned indenture more particularly mentioned and described, together with, &c. to have and to hold the said last-mentioned messuage, &c. with the appurtenances, &c. unto the said Sir J. S. the father, his executors, administrators, and assigns, from the feast of, &c. for and during, and unto the full end and term of twenty-one years from thence next ensuing and fully to be complete and ended, subject, nevertheless, to a *proviso* or condition thereafter mentioned and expressed, for vacating the said term at any of the several terms thereafter mentioned, yielding and paying, &c. &c. [as in first Count to the end, omitting what is in *italic*, and inserting in lieu thereof what is in the margin]: And the said plaintiff saith, that the said Sir J. S. the son, as such assignees as aforesaid, in his lifetime, and the said defendant, as such administrator as aforesaid, since his death, did not keep, nor hath either of them kept with him the said

said plaintiff, executor as aforesaid, the covenants so made by the said Sir J. S. the father, for himself and his assigns as aforesaid, but have broken the same, and to keep the same with the plaintiff, executor as aforesaid, have wholly refused and neglected, and the said defendant, administrator as aforesaid, still refuses to keep with said plaintiff. Damages four hundred pounds; suit, &c. (*proport* of letters testamentary); and the said plaintiff prays his majesty's process to be granted to him the said plaintiff, as such executor as aforesaid, upon the premises, against the said defendant, as such administrator as aforesaid, according to the form of the statute, &c. and it is granted to him, &c.

G. WOOD.

And the said defendant, administrator as aforesaid, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that as to the premises in the first Count of the said declaration in that respect, and the matters therein contained, are not sufficient in law to enable the said plaintiff, as executor as aforesaid, to have or maintain his aforesaid action against him the said defendant, as administrator as aforesaid, to which said declaration in that respect, in manner and form as the same is above made, the said defendant hath no need, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore, for want of a sufficient declaration in this respect the said defendant prays judgment if the said plaintiff, as executor as aforesaid, ought to have or maintain his said action as to the premises in the first Count of the said declaration mentioned, against him. &c. And for cause of demurrer in law in this behalf, the said defendant, administrator as aforesaid, according to the form of the statute in such case made and provided, shews to the court here these causes following, that is to say, for that it is not alledged, nor does it appear in or by the (1) *first* Count of the said declaration, that the said J. D. deceased, in his lifetime, had such interest or estate of and in the premises in the said (2) *first* Count of the said declaration stated to have been demised by him to the said Sir J. S. the father, *therein also mentioned*, at the time of making the said indenture of demise in that behalf, *in that Count also mentioned*, as would or could by law vest in the said plaintiff, as his executor, so as to enable him the said plaintiff, as such executor, to maintain any action of covenant (3) *upon* the breaches of covenant contained in that indenture; and also for that it is not alledged, nor does it appear in or by the first Count of the said declaration, that the said J. D. deceased, in his lifetime had such an interest or estate of and in the said premises in the said (4) *first* Count of the said declaration mentioned, to have been demised by him to the said Sir J. S. the father, at the time of making of the said demise therein mentioned, as would or could enable him by law to make such demise as in the (5) *first* Count of the said declaration mentioned; and also for that it appears, in and by the said (6) *first* Count of the said declaration mentioned, that the

Demurrer to each Count, for not shewing that the lessor had such an interest as enabled him to make the demise; for that the lease is void, being granted for a longer term than plaintiff possessed; the declaration argumentative, and the breaches double in the instances particularly pointed out.

(1) "second"

(2) "second"

(3) "for the breaches in that Count mentioned;"

(4) "second"

(5) "second"

(6) "second"

H b 2

said

COVENANT.—DEMURRER.

(7) "second"

(8) "second"

(9) "and still is"

(10) "upon the breach;"

(11) "breach,"

indenture of demise in that Count mentioned to have been made between the said J. D. of the one part, and the said Sir J. S. of the other part, was void in law, inasmuch as the said J. D. demised the said premises therein mentioned for a longer term than he the said J. D. was possessed of or entitled unto the same; and also for that it is not alledged, nor does it appear in or by the said (7) *first* Count of the said declaration mentioned, that the said J. D. deceased, at the time of his death, had any estate, right, title, or interest *in law* whatsoever, of and in to the said demised premises in the said first Count of the said declaration mentioned; and also for that the said first Count of the said declaration is argumentative, in this, that the said plaintiff hath, in and by the said (8) *first* Count of his said declaration shewn, that he duly proved the will of the said J. D. and took upon himself the burthen of the execution thereof, and thereby became and was (9) possessed of and entitled unto his said right of renewal therein mentioned, and all other the interests of the said J. D. of and in the said premises, with the appurtenances, without positively alledging or shewing that the said J. D. was at the time of his death possessed of such an estate and interest in law in the premises, as upon his death could by law vest in the said plaintiff as his executor, for the purpose of enabling him the said plaintiff, as executor as aforesaid, to maintain any action of covenant (10) *for the breaches in the Count mentioned*; and also for that no material issue can be taken upon such argumentative pleading; and also for that the said breach of covenant in the said first Count first above assigned is double, in that it joins and attempts to put in issue two distinct matters, to wit, what rent was due from the said Sir J. S. the son in his lifetime, and also what rent was due from the said defendant as administrator as aforesaid, in the same breach; and also for that the said breach in the said first Count secondly above mentioned is double in this, that it joins two distinct matters, and attempts to put two distinct matters in issue, *viz.* whether the said Sir J. S. the son in his lifetime repaired the said premises *or not*, and also whether the said defendant surrendered the same to the said plaintiff properly repaired or not; and also for that the said *second* breach is contradictory and absurd, in this, that it states that the said Sir J. S. the son suffered and permitted the said premises to be out of repair until the determination of the said term, whereas it appears by that (11) *first* Count that the said Sir J. S. the son was dead before the determination of the said term; and also for that the said *first* Count of the said declaration is in other respects insufficient, informal, and absurd, &c.: And the said defendant, administrator as aforesaid, as to the said premises in the second Count of the said declaration contained, says, that the said declaration in that respect, and the matter therein contained, are not sufficient in law, &c. &c. [as the demurrer to the first Count, only leaving out what is in *italic* and inserting what is in the margin.]

WILLIAM BALDWIN.

ESSEX,

ESSEX, to wit. Stephen Brown, late of, &c. yeoman, and Joseph Rayner, late of, &c. farmer, assignees of Joseph Rayner deceased, were summoned to answer unto William Start, assignee of Thomas Kent, in a plea that they the said Stephen and Joseph Rayner, assignees as aforesaid, keep with him the said William the covenant made between the said Thomas Kent and the said Joseph Rayner deceased, in his lifetime for himself and his assigns, according to the force, form, and effect of a certain indenture thereof made between the said Thomas Kent and the said Joseph Rayner deceased, in his lifetime; and thereupon the said William, by John Usher his attorney, complains, that whereas before and at the time of the making of the indenture of lease hereafter mentioned to have been made by the said Thomas Kent to the said Joseph Rayner deceased, he the said Thomas Kent was seised, to wit, in his demesne as of fee, of and in the several premises by that indenture demised, and hereinafter mentioned and described, and being so thereof seised by a certain indenture made the twentieth day of May 1765, to wit, at, &c. in, &c. between the said Thomas Kent of the one part, and the said Joseph Rayner deceased, of the other part (the counterpart of which said indenture, sealed with the seal of the said Joseph Rayner deceased, and bearing date the same day and year aforesaid, the said William now brings here into court), the said Thomas Kent, for the consideration therein mentioned, did demise, lease, and to farm let unto the said Joseph Rayner deceased, his executors, and administrators, “All that capital messuage called Blackmore-hall, with all and singular the houses, outhouses, &c. and all the lands, meadows, pastures, feedings, and appurtenances thereunto belonging, or in any wise appertaining, or therewith, then, or there lately used, occupied, or enjoyed, or accepted, reputed, or taken as part, parcel, or member thereof, with their and every of their appurtenances, situate, lying, and being in, &c. and then in the tenure and occupation of the said Joseph Rayner deceased, his assignee, or assigns, all which said lands, meadows, pastures, and feedings did contain together in the whole by common estimation, ninety acres, or thereabouts; and also all those two tenements theretofore erected and built upon some part of the therein and hereinbefore mentioned to be demised premises, and then in the occupation of the said Joseph Rayner deceased, his assignee, or assigns, undertenant or undertenants, except and always reserved out of that then present demise and lease unto the said Thomas Kent, his heirs, and assigns, all and all manner of wood, underwood, timber trees, bowlings, and other trees then standing, growing, and being, or which at any time or times thereafter during the continuance of that then present demise to come, and be, into, and upon the said demised premises, or any part thereof, with free liberty of ingress, egress, and regress, to and for the said Thomas Kent, his heirs, and assigns, and his and their servants and workmen with horses, carts, and carriages, and by and with all other usual ways and means, from time to time, and at all seasonable times in the year during

Declaration in covenant, assignee of lessor against assignee of lessee, for non-payment of rent, and for yielding up premises out of repair, &c. with a great variety of other breaches in tillage, &c.

COVENANT.—BY (ASSIGNEE OF) LESSOR.

the continuance of that then present demise to come, and be, into, and upon the said demised premises, or any part thereof, to sell and stubble down, saw, take, and carry away all such and so much of the said wood, &c. as he or they should think fit, doing thereby as little damage to the said Joseph Rayner, his executors, administrators, and assigns, in his and their corn and grass as convenient might be; to have and to hold the said capital messuages, lands, meadows, pastures, tenements, hereditaments, and all and singular the premises therein and hereinbefore mentioned and intended to be thereby demised, with their and every of their appurtenances (except as before excepted), unto the said Joseph Rayner deceased, his executors, administrators, and assigns, from the feast-day of St. Michael the Archangel, then next ensuing the date thereof, for and during and unto the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended, yielding and paying therefore yearly, and every year, during the said term thereby granted unto the said Thomas Kent, his heirs, executors, administrators, and assigns, the yearly rent or sum of sixty pounds of lawful money of Great Britain, at the two most usual feast-days or days of payment in the year (that is to say), the feast-day of the Annunciation of the blessed Virgin Mary, and St. Michael the archangel, by even and equal portions; and the said Joseph Rayner, deceased, for himself, his executors, administrators, and assigns, did covenant, promise, and grant to and with the said Thomas Kent, his heirs, and assigns, by the said indenture in manner and form following (that is to say), that he the said Joseph Rayner, lastly above named, his executors, administrators, and assigns, or some or one of them, should and would yearly, and every year, during the continuance of that then present demise, well and truly pay, or cause to be paid unto the said Thomas Kent, his heirs, or assigns, the aforesaid rent or sum of sixty pounds, at such times and in such manner as was therein before appointed for payment thereof, according to the true intent and meaning of the said indenture, and that he the said Joseph Rayner deceased, his executors, administrators, and assigns, at his or their proper costs and charges, should and would from time to time during the continuance of that demise, so often as need should require, well and sufficiently repair, amend, maintain, and keep the said messuages, outhouses, &c. and all and singular the premises, in, by, and with all and all manner of needful, necessary, and tenantable reparations and amendments whatsoever; and likewise should and would well and sufficiently repair, amend, maintain, and keep all and singular the hedges, fences, bars, pales, gates, banks, rails, and stiles in and about the said demised premises, and the ponds, water courses, and ditches there, should and would, from time to time, in an husbandlike manner well and sufficiently cleanse and scour, laying two spits of earth upon the bank where such ditches should be scoured, for the preservation of the quick growing there, and the said messuages, outhouses, &c. with the bars, keys, locks, staples, and glass windows of the same,

same, which then were, or thereafter during the continuance of that then present demise should be thereunto made or belonging, and the said hedges, fences, gates, bars, rails, and stiles being so well and sufficiently repaired, amended, maintained, fenced, hedged, inclosed, and kept, and the said ponds, water courses, and ditches well and sufficiently cleaned and scoured, at the end, expiration, or other sooner determination of that then present demise, should and would peaceably and quietly have and yield up unto the said Thomas Kent, his heirs, and assigns; and that he the said Joseph Rayner, deceased, his executors, administrators, or assigns, should not nor would during the said term take above two crops of any corn or grain together upon any of the lands thereby demised, but should and would, after two crops taken, well and sufficiently, and in a husbandlike manner fallow and summer-till the same; and at the end, or other sooner determination, should and would yield and deliver up unto the said Thomas Kent, his heirs, or assigns, twenty-three acres of the premises thereby demised in fallow, well and sufficiently and at all seasonable times plowed, and fit for seed, he the said Thomas Kent, his heirs, or assigns, allowing and deducting out of the rent which should be due for the premises unto the said Joseph Rayner deceased, his executors, administrators, or assigns, the sum of four shillings and six-pence an acre for every whole tilth, and two shillings and six-pence an acre for every half tilth, and ten shillings an acre for the rent of the said fallow: and further, that he the said Joseph Rayner deceased, his executors, administrators, and assigns, should and would yearly, and every year during the said term, expend upon the said demised premises all such stover as should arise or grow thereupon, except the wheat straw, for every load whereof which he or they should sell, he or they should bring, lay, and bestow upon the said demised premises two loads of dung also, and also should carry on, lay, spread, and bestow in and upon the most needful places of the said demised premises, all the dung, muck, manure, and compost arising upon the said demised premises during the said term (except the last year of the said term), and at the end of the said term should leave all the dung and muck arising upon the said premises the last year of the said term, he the said Thomas Kent, his heirs, and assigns, allowing and paying unto him or them for the said muck and dung so left the last year the sum of one shilling a load; and moreover, that he the said Joseph Rayner deceased, his executors, administrators, and assigns, should not, nor would at any time during the said term, fell, saw, cut down, top, or lop any of the timber trees, bowlings, and other trees then growing and being upon the said demised premises (except the lops and tops of the said bowlings for his and their needful and necessary firing, to be had and taken in an husbandlike manner, and not otherwise, and to be spent upon the said demised premises, and not elsewhere); and that he the said Joseph Rayner deceased, his executors, administrators, and assigns, when and so often as he or they should cut any quick hedge upon any part of the said demised premises, he or

COVENANT.—BY (ASSIGNEE OF) LESSOR.

they should scour the ditch belonging to the said hedge, and lay two spits of earth upon the bank thereof for the nourishment of the said quick, and should preserve the said quick as much as in either of them laid, as by the said indenture, reference being thereto had, will, amongst other things, more fully and at large appear; by virtue of which said demise the said Joseph Rayner deceased, in his lifetime, to wit, on the twenty-ninth day of September 1765, entered into all and singular the said demised premises, with the appurtenances, and was possessed thereof for the said term so to him thereof demised as aforesaid, the reversion thereof, with the appurtenances belonging unto the said Charles Kent, his heirs, and assigns, and the said reversion being so belonging as aforesaid, afterwards, to wit, on the sixth day of April 1780, at, &c. in, &c. by a certain indenture of bargain and sale then and there made between the said Charles Kent of the one part, and the said William Start of the other part (one part of which said last-mentioned indenture, sealed with the seal of the said Charles Kent, he the said William Start now brings into court here, the date whereof is the same day and year last aforesaid), the said Charles Kent, for the considerations therein mentioned, bargained and sold unto the said William Start the said reversion, with the appurtenances, of and in the said demised premises with the appurtenances, to have and to hold the same, with the appurtenances, unto the said William Start, his executors, administrators, and assigns, from the day next before the day of the date of the said indenture of bargain and sale, for and during and unto the full end and term of one whole year then next ensuing, and fully to be complete and ended, as by the said indenture of bargain and sale, relation being thereto had, may more fully appear." By virtue of which said indenture of bargain and sale, and by force of the statute made for transferring of uses into possession, the said William Start became and was possessed of the said reversion of and in the said demised premises, with the appurtenances, for the said term so to him thereof granted as aforesaid, the further reversion thereof, with the appurtenances belonging to the said Charles Kent, and being so thereof possessed, and the said further reversion thereof, with the appurtenances belonging as aforesaid, afterwards, to wit, on the seventh of April 1780, at, &c. in, &c. by a certain indenture of release then and there made between the said Charles Kent of the one part, and the said William Start of the other (the one part of which said last-mentioned indenture, sealed with the seal of the said Charles Kent, he the said William Start now brings into court here, the date whereof is the same day and year last aforesaid), the said Charles Kent, for the considerations therein mentioned, released the said further reversion, with the appurtenances, of and in the said demised premises, with the appurtenances, to the said William Start, to have and to hold the same unto the said William Start, his heirs, and assigns, to the use and behoof of him the said William Start, his heirs, and assigns for ever, as by the said indenture of release (relation being there-
unto

unto had, may more fully appear), by means whereof the said William Start became and was and from thence hitherto hath been, and still is seised in his demesne as of fee, of and in the said reversion of and in the said demised premises, with the appurtenances, to wit, at, &c. in, &c.; and the said William Start being so thereof seised, afterwards, and before the end and expiration of the said demised term, to wit, on the first of January 1785, at, &c. in, &c. all the estate, right, title, term of years then to come and unexpired, property, interest, claim, and demand whatsoever of him the said Joseph Rayner deceased, of and in to the said demised premises, with the appurtenances, by assignment thereof then and there legally made, came to and vested in the said Stephen Brown and Joseph Rayner the defendants; by virtue whereof they the said Stephen Brown and Joseph Rayner afterwards, to wit, on, &c. entered into all and singular the said demised premises, with the appurtenances, and became and was possessed thereof for the residue of the said term so demised as aforesaid then to come and unexpired, and remained and continued so possessed of the said demised premises, with the appurtenances, from thence until the end and expiration of the said demised term: And although the said William Start hath always from the time of his becoming so seised of the said reversion of and in the said demised premises, with the appurtenances, until the end and determination of the said demised term of twenty-one years, well and duly performed and fulfilled all and singular the covenants, matters, and things contained in the said indenture of lease so made between the said Thomas Kent and the said Joseph Rayner deceased, on the part and behalf of the said Thomas Kent, and his assigns, to be done and performed according to the force, form, and effect of the said indenture, to wit, at, &c. in, &c.; yet protesting that the said Stephen Brown and Joseph Rayner, the defendants, after the said assignment so to them made as aforesaid, did not perform or fulfil any thing in the aforesaid indenture of lease contained on the part and behalf of the said Joseph Rayner deceased, and his assigns, to be done and performed; the said William Start in fact saith, that although after he the said William Start so became seised of the said reversion of and in the said demised premises, with the appurtenances, and after the said assignment so made to the said Stephen Brown and Joseph Rayner, the defendants as aforesaid, and before the expiration of the said demised term of twenty-one years, that is to say, on the twenty-ninth day of September, 1786, at, &c. in, &c. a large sum of money, to wit, the sum of thirty pounds of the said yearly rent of sixty pounds, in and by the aforesaid indenture of lease so reserved for the last half year of the said term so thereby demised as aforesaid, became and was then and there due, owing, and payable from, and ought to have been then and there paid by them the said Stephen Brown and Joseph Rayner, the defendants, to the said William Start; yet they the said Stephen Brown and Joseph Rayner, the defendants, did not then pay, or cause to be paid unto him the said William Start, the said sum of money so then and

COVENANT.—BY (ASSIGNEE OF) LESSOR:

and there due, owing, and payable for such rent as aforesaid, but omitted and neglected so to do, and suffered and permitted the same to become and be, and the same still is in arrear, owing, and unpaid to him the said William Start, contrary to the form and effect of the said indenture of lease, and of the covenants of the said Joseph Rayner deceased, in that behalf made as aforesaid, to wit, at, &c. in, &c.; and the said William Start in fact further saith, that whilst he was so possessed of, and in the said reversion of and in the said demised premises as aforesaid, and after the said assignment so made to the said Stephen Brown and Joseph Rayner, the defendants as aforesaid, and whilst they were so possessed of the said demised premises, with the appurtenances as aforesaid, and during the continuance of the said demise, to wit, on, &c. in, &c. the said demised messuages, &c. were ruinous, out of repair, and in decay, to wit, in the walls, beams, timbers, tilings, slatings, thatchings, and coverings thereof, and in the floors, stairs, stair-cases, ceilings, wainscottings, doors, door-cases, windows, window frames thereof, and in various other parts and particulars thereof, for want of needful and necessary repairing and amending thereof, and all and singular the hedges, &c. in and about the said demised premises, and of and belonging to the same were ruinous, prostrate, broken down, rotten, and in great decay for want of needful and necessary repairing and amending thereof, and all and singular the ponds, ditches, drains, and water courses in and of and belonging to the said demised premises, were filled and choaked up with mud, filth, mire, dirt, and rubbish, for want of needful and necessary scouring and cleansing thereof; and the said several premises so being ruinous, out of repair, and in great decay, choaked up, stopped up, and obstructed for want of needful and necessary repairing and scouring thereof, they the said Stephen Brown and Joseph Rayner, the defendants as aforesaid, suffered and permitted the same to be and continue so ruinous, out of repair, and in decay, choaked up, stopped up, and obstructed as aforesaid, from thence until the end and expiration of the said demised term, and then, that is to say, at the end and expiration of the said term, left and yielded up the said demised premises, with the appurtenances, to the said William Start so ruinous, out of repair, and in decay, foul, choaked up, stopped up, and obstructed as aforesaid, contrary to the tenor and effect of the said indenture of lease between the said Thomas Kent and the said Joseph Rayner deceased, and of the covenant of him the said Joseph Rayner deceased, in that behalf made as aforesaid, to wit, at, &c. in, &c. whereby the said William Start was and hath been necessarily forced and obliged to lay out and expend, and hath laid out and expended a large sum of money, to wit, the sum of two hundred pounds, in and about the repairing of the said demised premises, with the appurtenances, to wit, at, &c. in, &c.; and the said William Start in fact further saith, that whilst he was so seised of and in the said reversion of and in the said demised premises, with the appurtenances, whilst the said Stephen Brown and Joseph Rayner,

Rayner, the defendants, were so possessed of the said demised premises, under and by virtue of the aforesaid assignment thereof, and during the continuance of the said demised term, that is to say, in the years 1785, or 1786, they the said Stephen Brown and Joseph Rayner, the defendants, did take above two crops of corn and grain together, to wit, three crops successively of corn and grain upon a great part, to wit, fifty acres of the said land, by the said indenture of lease between the said Thomas Kent and the said Joseph Rayner deceased, devised as aforesaid, contrary to the tenor and effect of the said indenture, and of the covenant of him the said Joseph Rayner deceased, in that behalf; and although the said Stephen Brown and Joseph Rayner, the defendants, in each of those years, that is to say, in the said years 1785 and 1786, in other parts of the said demised land, took and had two crops of corn and grain; yet the said William in fact further saith, that the said Stephen Brown and Joseph Rayner, the defendants, did not, after such two crops so by them had and taken as last aforesaid, well and sufficiently, and in an husbandlike manner, fallow and summer-till the land from whence such crops were so taken, but omitted and neglected so to do, contrary to the tenor and effect of the aforesaid indenture of lease, and of the covenant of the said Joseph Rayner deceased, in that behalf, to wit, at, &c. in, &c. whereby the said lands so then cropped, and omitted to be fallowed and summer-tilled as aforesaid, became and were very much impoverished and injured; and the said William Start in fact further saith, the said Stephen Brown and Joseph Rayner, the defendants, did not, at the end and determination of the aforesaid demised term, leave and yield up to the said William twenty-three acres of the said demised premises in fallow, well and sufficiently and at all seasonable times ploughed and fit for seed; although he the said William was then and there ready and willing to allow and deduct out of the rent, then due for the said demised premises, unto the said Stephen Brown and Joseph Rayner, the defendants, the sum of four shillings and sixpence an acre for every whole tilth, and two shillings and sixpence per acre for every half tilth, and ten shillings an acre for the rent of the said fallow, but omitted and neglected so to do, and therein failed and made default, contrary to the tenor and effect of the said indenture of lease, and of the covenant of the said Joseph Rayner deceased, in that behalf, to wit, at, &c. in, &c.; and the said William in fact further saith, that the said Stephen Brown and Joseph Rayner, the defendants, did not by yearly and every year during the said demised term, whilst they were so possessed of the said demised premises by virtue of the aforesaid assignment thereof, and whilst he the said William was so seised of and in the said reversion in the same as aforesaid, expend upon the said demised premises all such stover as arose and grew thereupon (except the wheat straw), nor carry or lay, spread, or bestow in and upon the most needful places of the said demised premises, all the dung, muck, manure, and compost arising upon the said demised premises during the time last aforesaid,

said, except the last year of the said demised term, nor at the end of the said term leave all the dung and muck arising upon the said demised premises the last year of the said term, although he the said William was then and there ready and willing to pay and allow to them the said Stephen Brown and Joseph Rayner, the defendants, for the said muck and dung so left the last year of the said demised term, the sum of one shilling a load, but omitted and neglected so to do, and on the contrary thereof, the said William saith, that they the said Stephen Brown and Joseph Rayner, the defendants, during the continuance of the said demised term, and whilst they were so possessed of the said demised premises, with the appurtenances, and whilst the said William was so seised of and in the said reversion of and in the said demised premises as aforesaid, without the consent of him the said William, took and carried away from and off the said demised premises, divers large quantities, to wit, one hundred cart loads of stover, which during that time arose and grew thereupon, and also took and carried away from and of the said demised premises, divers large quantities of dung, muck, manure, and compost, to wit, one hundred cart loads of manure, and one hundred cart loads of compost which arose upon the said demised premises during the time last aforesaid, and not in the last year of the said demised term, and spent, laid, spread, and bestowed, and disposed of the same elsewhere, and otherwise than on then said demised premises, or on any part thereof, contrary to the tenor and effect of the said indenture of lease, and of the covenant of the said Joseph Rayner deceased, in that behalf, and although the said Stephen Brown and Joseph Rayner, the defendants, whilst they were so possessed of the said demised premises, with the appurtenances, and whilst the said William was so seised of and in the said reversion as aforesaid, sold and disposed of divers large quantities, to wit, one hundred cart loads of wheat straw, which during that time arose and grew upon the said demised premises, to wit, at, &c. in, &c.; yet they the said Stephen Brown and Joseph Rayner did not, for every load of the said wheat straw which they so sold and disposed of, bring, lay, and bestow upon the said demised premises two loads of dung, but therein wholly failed and made default, contrary to the tenor and effect of the said indenture of lease, and of the covenant of the said Joseph Rayner deceased; and the said William in fact further saith, that the said Stephen Brown and Joseph Rayner, the defendants, during the continuance of the said demised term, and whilst they were so possessed of the said demised premises, with the appurtenances as aforesaid, and whilst the said William was so seised of and in the said reversion as aforesaid, did fell, saw, cut down, top, and lop a large quantity of the timber trees, bowlings, and other trees, to wit, five hundred timber trees, five hundred bowlings, and five hundred other trees then growing and being upon the said demised premises, other and besides the lops and tops of the said bowlings for their needful and necessary firing, had and taken in an husbandlike manner, to be spent upon

the

the said demised premises; and although they the said Stephen Brown and Joseph Rayner, the defendants, during the time last aforesaid, cut, lopped, and topped certain of the bowlings growing in and upon the said demised premises, for and under pretence of such firing; yet they the said Stephen Brown and Joseph Rayner, the defendants, did not spend the loppings, toppings, and cuttings of the said last-mentioned bowlings upon the said demised premises, according to the form and effect of the aforesaid indenture of lease, but on the contrary spent and disposed of the same elsewhere, and otherwise than on the said demised premises, to wit, at, &c. in, &c. contrary to the tenor and effect of the said indenture, and of the covenant of the said Joseph Rayner deceased in that behalf: And the said William in fact further saith, that although the said Stephen Brown and Joseph Rayner, the defendants, after the said assignment so to them made as aforesaid, and whilst they were so possessed of the said demised premises as aforesaid, and whilst the said William was so seised of and in the said reversion as aforesaid, did frequently cut divers of the quick hedges of the said demised premises, having ditches belonging to the same plaintiff, they the said Stephen Brown and Joseph Rayner, the defendants, did not, when and so often as they cut the said quick hedges, scour the said ditches so thereto belonging as aforesaid, or either of them, lay two spits of earth upon the banks thereof respectively, for the nourishment of the said quicks, nor did they the said Stephen Brown and Joseph Rayner preserve the said quicks as much as in them lay, but omitted and neglected so to do, and on the contrary thereof wrongfully, wilfully, and negligently suffered and permitted the same to be and become prostrate, choked down, out of repair, and in decay, contrary to the tenor and effect of the aforesaid indenture of lease, and of the covenant of the said Joseph Rayner deceased in that behalf, whereby the lands which such quicks and hedges belonged and appertained, and which were thereby formerly inclosed and separated from each other, became and were laid open, and in consequence thereof the said William was forced and obliged to, and did lay out and expend a large sum of money, to wit, the sum of one hundred pounds, in and about the repairing and making good of such hedges and fences, to wit, at, &c. in, &c.; and so the said William saith, that the said Stephen Brown and Joseph Rayner have not since the said assignment so to them made as aforesaid (although often requested), kept the said covenant so made by the said Joseph Rayner deceased, for himself and his assigns, with the said Thomas Kent and his assigns, but have broken the same, and to keep the same with him the said William have wholly neglected and refused, and still refuse so to do, to wit, at, &c. in, &c.; wherefore the said William saith, that he is injured, and hath sustained damage to the value of three hundred pounds, and therefore he brings his suit, &c.

V. LAWES.

SURRY,

Declaration in
covenant by ad-
ministrator *cum*
testamento annexo,
and legatee of a
reversion, and as
assignee in the
second degree,
of the reversion
of a chattel inte-
rest against the
assignee of a les-
see, for rent ac-
crued during
their respective
possessions.

SURRY, to wit. Sarah Sheffard, assignee of William Sheffard (which said William Sheffard was assignee of Edward Evans and John Adams), complains of James Curry, assignee of Cornelius Busby, being in the custody of the marshal of the marshal-
sea of our lord the now king, before the king himself, of a plea of breach of covenant: for that whereas the said Edward Evans and John Adams heretofore, to wit, on the twenty-second day of January, in the year of Our Lord 1790, to wit, at Croydon in the county of Surry, were lawfully possessed of the premises hereafter mentioned to be demised, with the appurtenances, for the residue of a certain term of years, to wit, a term of eighty-seven years, commencing from the feast-day of St. Michael the Archangel, which was in the year of Our Lord 1789; and being so possessed thereof by a certain indenture made the twenty-second day of January in the year of Our Lord 1790, to wit, at Croydon aforesaid, in the county aforesaid, between the said Edward Evans and John Adams of the one part, and the said Cornelius Busby of the other part (the counterpart of which said indenture, sealed with the seal of the said Cornelius Busby, the said Sarah now brings here into court, the date whereof is the day and year last aforesaid), they the said Edward Evans and John Adams, for the considerations therein mentioned, did, and each of them did demise, lease, and to farm let to the said Cornelius Busby, his executors, administrators, and assigns, all that piece or parcel of ground situate, lying and being on the south-side of Union-street in the parish of St. Mary, Lambeth, containing in length, from east to west, along the south-side of Union-street aforesaid, one hundred and sixty-five feet of assize, little more or less, and from north to south ninety feet of assize, little more or less, and abutting north on Union-street aforesaid, south, on ground belonging to Samuel Swabey, esquire; east, on a new way or road intended to be called _____; and west, on a new way or road intended to be called _____; together with all the messuages or tenements intended to be erected and built thereon, and all and singular other the appurtenances thereunto belonging, and all ways, watercourses, lights, easements, commodities, profits, emoluments, advantages, and appurtenances whatsoever to the said piece or parcel of ground belonging or in any wise appertaining, to hold the said demised premises, with the appurtenances, to the said Cornelius Busby and his assigns, from the feast-day of the nativity of St. John the Baptist then last past, for the term of eighty-seven years then next ensuing, yielding and paying therefore for the first year of the said term to the said Edward Evans and John Adams, or their assigns, one pepper-corn, and yielding and paying therefore yearly, and every year during the remainder of the said term the sum of forty-one pounds of lawful money of Great Britain, upon the four most usual days for payment of rent in the year, that is to say, the feast of St. Michael the Archangel, the birth of Our Lord Christ, the annunciation of the Blessed Virgin Mary, and the Nativity of St. John the Baptist, by even and equal

equal portions, the first payment thereof to begin and be made on the feast-day of St. Michael the Archangel then next ensuing the date thereof, and the said Cornelius Busby, for himself and his assigns, did, by the said indenture of lease (amongst other things), covenant, promise, and agree, to and with the said Edward Evans and John Adams and their assigns, that the said Cornelius Busby, or his assigns, or some or one of them, should and would yearly, and every year during the aforesaid term, well and truly pay, or cause to be paid to the said Edward Evans and John Adams, or their assigns, the said yearly rent or sum of forty-four pounds on the days and times, and in manner and form before-mentioned for payment thereof, as by the said indenture, relation being thereto had, will amongst other things more fully appear; by virtue of which said demise the said Cornelius Busby entered into the said demised premises, with the appurtenances, and was possessed thereof for the said term so to him thereof granted, the reversion of the said demised premises, with the appurtenances, belonging to the said Edward Evans and John Adams; and the said Cornelius Busby being so possessed of the said demised premises, with the appurtenances, and the said reversion thereof belonging to the said Edward Evans and John Adams as aforesaid, they the said Edward Evans and John Adams afterwards, to wit, on the eighth day of April, in the year of Our Lord 1794, to wit, at Croydon aforesaid, in the county aforesaid, by a certain indenture of assignment then and there made between the said Edward Evans and John Adams of the one part, and the said William Sheffard of the other part (which said last-mentioned indenture, sealed with the seals of the said Edward Evans and John Adams, the said Sarah now brings into court here, the date whereof is the day and year last-mentioned), they the said Edward Evans and John Adams, for the considerations therein mentioned, did grant, bargain, sell, assign, transfer, and set over unto the said William Sheffard, his executors, administrators, and assigns (amongst other premises), all that the said reversion of the said demised premises, together with the said indenture, to hold the same assigned premises, with the appurtenances, to the said William Sheffard, his executors, administrators, and assigns, from the feast-day of the Annunciation of the Blessed Virgin Mary then last past, for the remainder unexpired of the said term of the said Edward Evans and John Adams therein (as by the said last-mentioned indenture of assignment appears); by virtue whereof the said William Sheffard became and was, and until the time of his decease, continued possessed of the said reversion of and in the said demised premises: And the said Sarah in fact further saith, that the said William Sheffard being so possessed of the said reversion of and in the said demised premises, with the appurtenances, afterwards and during the continuance of the said term, to wit, on the sixteenth day of November, in the year of Our Lord 1791, to wit, at Croydon aforesaid, in the county aforesaid; and the said William Sheffard made and published his last will and testament in writ-

writing, and thereby gave and bequeathed the said reversion of the said demised premises, with the appurtenances, to the said Sarah; and afterwards, to wit, on the first day of December, in the year of Our Lord 1791, at Croydon aforesaid, in the county aforesaid, the said William Sheffard departed this life without altering or revoking his said will: And the said Sarah in fact further says, that afterwards, to wit, on the twenty-sixth day of April, in the year of Our Lord 1792, at Croydon aforesaid, in the county aforesaid; that the said William Sheffard not having appointed any executor to his said will, administratrix of the goods, chattels, and credits which were of the said William Sheffard (with his will annexed), was by John, by Divine Providence archbishop of Canterbury, primate of all England, and metropolitan, to whom the granting thereof belonged, granted to the said Sarah, by virtue whereof she the said Sarah afterwards, to wit, on the day and year last aforesaid, at Croydon aforesaid, in the county aforesaid, entered into the said reversion of and in the said demised premises, with the appurtenances, and became and was, and from thence hitherto hath been, and still is possessed thereof for the residue of the said term of eighty-seven years then to come and unexpired therein, (and the said Sarah brings here into court the said letters of administration of the said archbishop, with the will annexed, which sufficiently prove the granting thereof in form aforesaid, the date whereof is the day and year last aforesaid: And the said Sarah further says, that the said Cornelius Busby being so possessed of the said demised premises, with the appurtenances, for the said term so to him thereof demised, during the continuance of the said term, to wit, on the day of , at Croydon aforesaid, in the county aforesaid, all the estate and interest of the said Cornelius Busby of and in the said demised premises, came to and vested in the said James Corrie by assignment thereof, and he the said James Corrie then and there entered into and upon all and singular the said demised premises, with the appurtenances, and became and was possessed thereof: And the said Sarah in fact further says, that although afterwards, from the death of the said William Sheffard, and after she became possessed of the said reversion of the said demised premises, and whilst the same remained in the occupation of the said James Corrie, she the said Sarah hath well and truly performed and fulfilled all things in the said first-mentioned indenture of lease contained on the part and behalf of the said lessors and their assigns to be performed, according to the true intent and meaning thereof, to wit, at Croydon aforesaid, in the county aforesaid; yet protesting that the said James Corrie, since the assignment so made to him of the said demised premises as aforesaid, hath not performed or fulfilled any thing in the said indenture of lease contained on his part and behalf, as such assignee as aforesaid, to be performed and fulfilled: the said Sarah in fact says, that on the twenty-fifth day of December, in the year of Our Lord 1795, at Croydon aforesaid, in the county aforesaid, pounds of the rent aforesaid, for two years and

About the
time before or
after the death
of Sheffard?

and three-quarters of another year of the said term, ending on the day and year last aforesaid, became due and payable from the said James Corrie to the said Sarah, according to the form and effect of the said indenture of lease, and of the said covenant of the said Cornelius Busby therein, for himself and his assigns in that behalf made as aforesaid; yet the said James Corrie (although often requested) hath not paid the said rent, or any part thereof, to the said Sarah, but hath therein wholly failed and made default, contrary to the form and effect of the said indenture of lease, and of the said covenant of the said Cornelius Busby for himself and his assigns in that behalf made as aforesaid, to the damage of the said Sarah of pounds; for which she brings suit, &c. Pledges to prosecute John Doe and Richard Roe.

The facts of this case are not a little complicated, but I think I have sufficiently collected from the deeds and papers before me, that *all the rent* for which the action is brought accrued due after the death of William Sheffard; if so, I am of opinion that Mrs. Sarah Sheffard, his widow, must sue as his assignee, which she is in construction of law, whether she takes the rent, after it is recovered, as administratrix, with the will annexed, during widowhood, or in her own right, as legatee of the reversion under the will, (which, however, does not sufficiently appear from my instructions).

The receiver appointed by the court of chancery will, I think, be entitled, on a previous application to the chancellor's orders for that purpose, to sue in this action in Mrs. Sheffard's name without her express consent, but he must sue in her

name, and can't sue in his own as such receiver; for as receiver in chancery he has no legal title, *Pitt v. Snowden*, 3. Atk. 350.

Presuming still that Mrs. Sheffard is legatee of the reversion, as well as administratrix with the will annexed (but if it is otherwise, I must be furnished with the letters of administration). I have altered the declaration (from the form in which it was originally conceived, at her suit, as administratrix during widowhood, with the will annexed), stating the action to be at her suit, and her to be assignee in her own right; so that in its present form the action is in her name, as assignee in the second decree of the reversion of a chattel interest against the assignee of the lessee, for rent accrued during their respective possessions.

THO. BARROW.

YORKSHIRE, to wit. William Weddell, esquire, assignee of Mary Greville, complains of James Surnglehurst and Alice his wife, which said Alice is administratrix of all and singular the goods and chattels, rights and credits which were of R. S. deceased, who died intestate, being, &c. in a plea of breach of covenant: for that whereas before and at the time of the making of the indenture of lease hereafter mentioned to have been made by the said M. G. to the said R. S. the said M. G. was seised in her demesne as of fee, of and in the several premises hereafter mentioned, to have been demised by the said M. G. to the said R. S.; and being so thereof seised by a certain indenture made the eighth day of, &c. at, &c. in, &c. between the said M. G. of the one part, and the said R. S. of the other part (one part of which said indenture, sealed with the seal of the said R. S. he the said plaintiff now brings into court here, the date whereof is the day and year aforesaid), she the said M. G. for the considerations therein mentioned, did demise, grant, set, and to farm-let unto the said

Declaration in covenant, assignee of lessor against assignee of lessee for rent, and for suffering premises to be out of repair.

COVENANT.—(ASSIGNEE of) LESSOR

R. S. " all that dwelling-house, stables, turf-house, and garden, situate, lying and being in Tossido aforesaid, with the appurtenances thereunto belonging, and all and all manner of tenths and tythes arising therefrom, and then in the possession of the said R. S. his undertenant, undertenants, or assigns, together with all ways, waters, watercourses, easements, profits, commodities, advantages and appurtenances to the aforesaid premises, or any part thereof, belonging or in anywise appertaining, except as in the said indenture is excepted, to have and to hold the said dwelling-house, stable, turf-house and garden, tenths and tythes of all the demised premises, with their and every of their appurtenances (except as before excepted) unto the said R. S. and his assigns, from thenceforth for and during the natural lives of J. R. of Tossido aforesaid, the said R. S. and L. S. (brother of the said lessee), and for and during the natural life of the longest liver of them, yielding and paying therefore, yearly and every year during the said term, unto the said M. G. her heirs and assigns, the yearly rent or sum of one shilling of lawful money of Great Britain, at the feasts of the Annunciation of the Blessed Virgin Mary and St. Michael the Archangel, by even and equal portions, without deduction or defalcation of or for any manner of rates, taxes, or other payments whatsoever; and the said R. S. for himself, his executors, administrators, and assigns, and every of them, did covenant, promise, and grant, to and with the said M. G. her heirs and assigns, and every of them, by the said indenture in manner following, that is to say, that he the said R. S. his executors, administrators and assigns, or some or one of them, should and would, from time to time, and at all times thereafter during the term thereby granted, well and truly pay the said yearly rent or sum of one shilling, thereupon reserved as the same should become due and be payable, according to the reservation aforesaid, without deduction or defalcation of or for any manner of rates, taxes, or other payments whatsoever; and further also that he the said R. S. his executors, administrators or assigns, or some or one of them, should and would from time to time, and at all times thereafter during the term thereby granted, at his and their, or some or one of their own proper costs and charges, well and sufficiently repair, uphold, and maintain, amend, preserve, hedge, ditch, fence, cleanse, and keep the premises thereby demised, and every part and parcel thereof, and all houses and edifices, walls, hedges, ditches, gates, bars, pales, bolts, rails, stiles, and fences whatsoever, when, where, and as often as need should be and require, and at the end or other sooner determination of the term thereby granted, the same premises, and every part and parcel thereof, being so well and sufficiently repaired, upheld, maintained, amended, preserved, hedged, ditched, fenced, scoured, cleansed and kept into the hands of the said M. G. her heirs and assigns, quietly and peaceably should and would have, surrender, and yield up, together with all doors, locks, keys, bolts, hooks, hinges, wainscots, partitions, shelves, glass windows, gates, bars, posts, pales,

pales, rails, stiles, fences and appurtenances in, upon, and belonging to the premises or any part thereof, without spoiling or defacing the same, as by the said indenture, relation being thereto had, may amongst other things more fully and at large appear ;" by virtue of which said demise the said R. S. afterwards, to wit, on, &c. entered into all and singular the said demised premises with the appurtenances (except as aforesaid), and became and was thereof possessed for the said term to him thereof demised as aforesaid, the reversion thereof, with the appurtenances, belonging to the said M. G. her heirs and assigns ; and the said R. S. being so possessed of the said demised premises, with the appurtenances as aforesaid, for the said term so to him thereof demised as aforesaid, and the said reversion thereof, with the appurtenances belonging to the said M. G. as aforesaid, afterwards and during the continuance of the said demise, to wit, on, &c. at, &c. by a certain indenture of bargain and sale then and there made between the said M. G. and F. G. of the one part, and J. C. and W. R. of the other part (one part of which said last-mentioned indenture, sealed with the seal of the said M. G. and F. G. he the said W. W. now brings here into court, the date whereof is the day and year aforesaid) ; the said M. G. for the considerations therein mentioned, bargained and sold the said reversion of and in the said premises, with the appurtenances (amongst other things) to the said J. C. and W. R. *to have and to* "hold the same to the said J. C. and W. R. their executors, administrators and assigns, from the day next before the day of the date of the said last-mentioned indenture, for and during, and unto the full end and term of one year from thence next ensuing, and fully to be complete and ended, as by the said indenture of bargain and sale, relation being thereto had, will amongst other things more fully and at large appear ;" by virtue of which said last-mentioned indenture, and by force of the statute made for transferring uses into possession, the said J. C. and W. R. became and were possessed of the said reversion, with the appurtenances, for the said term so to them thereof granted as aforesaid, the further reversion thereof, with the appurtenances belonging to the said M. G. and F. G. their heirs and assigns, and being so thereof possessed, and the said further reversion thereof belonging as aforesaid, and the said R. S. being so possessed of the said demised premises, with the appurtenances as aforesaid, afterwards, to wit, on, &c. at, &c. by a certain indenture of release then and there made between the said R. G. and F. G. of the first part, and the said J. C. and W. R. of the second part, and R. W. of the third part (one part of which said indenture of release, the said W. W. now brings here into court, the date whereof is the day and year aforesaid), they the said M. G. and F. G. for the considerations therein mentioned, released the said further reversion of and in the said demised premises, with the appurtenances (amongst other things) to the said J. C. and W. R. *to have and to hold the same unto the said J. C. and W. R. their heirs and assigns, to such uses, upon such*

COVENANT.—(BY ASSIGNEE) OF LESSOR

trusts, and for such purposes as were and are in the said indenture in that behalf expressed, that is to say (amongst other uses in the said last-mentioned indenture specified) to the use (in the first place) of the said R. W. for and during the term of his natural life, without impeachment of waste, and from and after the determination of that estate, then to the use of the said J. R. and W. C. and their heirs, during the life of the said R. W. upon trust, to preserve the contingent uses and estates thereafter limited, and from and after the decease of the said R. W. then to the use and behoof of the said T. W. therein named, for and during the term of his natural life, without impeachment of waste, and from and after the determination of that estate, then to the use of the said J. C. and W. R. and their heirs, during the life of the said T. W. upon trust, to preserve the contingent uses and estates thereafter limited, and from and after the decease of the said T. W. then to the use and behoof of the first son of the body of the said T. W. and to the heirs male of the body of such first son lawfully begotten, remainder to the second, third, and every other son and sons of the body of the said T. W. lawfully issuing, and for want and in default of such issue, then to the use of the said J. C. and W. R. and their heirs upon trust, to preserve the contingent uses and estates thereafter limited, with remainder to the second son of the body of the said R. W. and the heirs male of the body of such second son lawfully issuing, as by the said indenture of release, relation being thereto had may more fully and at large appear :” And the said plaintiff avers, that after the making of the said last-mentioned indenture, and during the continuance of the said demise, to wit, on, &c. at, &c. the said T. W. the first son of the said R. W. died without issue, leaving the said W. W. second son of the body of the said R. W. lawfully begotten him surviving ; and that afterwards, to wit, on, &c. at, &c. the said R. W. died, upon whose death the said W. W. became and was, and from thence hitherto hath been, and still is seised in his demesne, as of fee-tail, to him and the heirs male of his body lawfully begotten, of and in the said reversion of and in the said demised premises, with the appurtenances, to wit, at, &c. : And the said W. W. avers, that the said R. S. in the aforesaid indenture of lease named, is still owing, to wit, at, &c. ; and although he the said W. W. always, since he so became seised of the said reversion as aforesaid, hitherto hath performed and fulfilled all things in the said indenture of lease contained on the part and behalf of the said M. G. and her assigns to be performed and fulfilled ; yet protesting that the said R. S. in his lifetime, and the said J. S. and Alice his wife since his death, have not performed or fulfilled any thing in the said indenture contained on the part and behalf of the said R. S. and his executors and administrators to be performed and fulfilled, the said W. W. in fact saith, that a large sum of money, to wit, the sum of four shillings of the said yearly rent or sum of one shilling in the said indenture of lease mentioned, for four years of the said term

term in that indenture also mentioned elapsed since the said W. W. so became seised of the said reversion as aforesaid, and ending and ended on the feast-day of the Annunciation of the Blessed Virgin Mary A. D. 1789, and then becoming and being due and payable, was not then paid, but became and was, and from thence hitherto hath been, and still is in arrear, unpaid, and owing unto him the said W. W. contrary to the tenor and effect of the said indenture of lease, and of the said covenant of the said R. S. in that behalf made as aforesaid, to wit, at, &c. : And the said W. W. further saith, that the said R. S. in his lifetime, and the said J. S. and Alice his wife since his death, have not, nor have, nor hath any or either of them, since he the said W. W. became so seised of the said reversion of and in the said demised premises as aforesaid, from time to time, and at all times, at their or any or either of their own proper costs and charges well and sufficiently repaired, upheld, maintained, amended, preserved, hedged, ditched, fenced, scoured, cleansed, and kept the said demised premises, and every part and parcel thereof, in all houses, edifices, barns, stables, walls, hedges, ditches, gates, bars, posts, pales, rails, stiles, and fences whatsoever, when, where, and as often as need hath been and required, but omitted and neglected so to do, and on the contrary thereof the said W. W. saith, that since he so became seised of and in the said reversion as aforesaid, and before the exhibiting the bill of him the said W. W. to wit, on, &c. at, &c. the said demised dwelling-house, stables, and other the erections, edifices, and buildings belonging to the said demised premises, and every part and parcel thereof, together with the walls, gates, &c. of and belonging to the said demised premises, with the appurtenances, became and were respectively ruinous, out of repair, prostrate, fallen down, and destroyed for want of needful and necessary repairing, upholding, and maintaining thereof, and so from thence hitherto have remained and continued, and still doth remain and continue, and the said demised garden also then and there became and was, and from thence hitherto hath been, and still is ruinous, out of repair, and useless, for want of needful and proper care and preservation thereof, and the ditches, drains, and watercourses of and belonging to the said demised premises became and were, and during all the time last aforesaid, have been and still are respectively foul, choaked up, and ruinous, for want of needful and necessary scouring, cleansing, and repairing thereof, contray to the tenor and effect of the said indenture of lease, and of the covenant of the said R. S. made as aforesaid ; and so the said W. W. saith, that the said R. S. and the said J. S. and Alice his wife have not kept with him the said W. W. the said covenants so made by the said R. S. as aforesaid (although often requested), but have broken the same, and to keep the same with the said W. W. as such assignee as aforesaid have refused, and the said J. S. and Alice his wife still refuse so to do, to the damage of the said J. S. of two thousand pounds ; and therefore he brings his suit.

V. LAWES.

Declaration for
breach of cove-
nant, in not re-
pairing the win-
dows; for com-
mitting waste,
by taking away
trees, destroy-
ing window-
shutters, and re-
moving and car-
rying away par-
tition.

LANSDOWN

against

BEARD.

SOMERSETSHIRE, to wit. Edmund Lans-
down complains of William Beard, being, &c. of
a plea of breach of covenant; for that whereas, by
a certain indenture, made on the fifth day of September 1772, at
Taunton, in the said county of Somerset, between the said Ed-
mund (by the name of E. L. of Barnwell, in the county of Somer-
set yeoman), of the one part, and the said W. (by the name of
W. B. of the same place, taylor), or the other part, (the counter-
part of which said indenture, sealed with the seal of the said W.
the said E. now brings here into court, the date whereof is the
same day and year aforesaid); he the said E. for the considera-
tions therein mentioned, did demise, lease, and to farm let unto
the said W. all that messuage or tenement, with the stable, gar-
den, and orchard to the same belonging, situate, lying, and be-
ing in the West-street of Barnwell aforesaid, then in the occupa-
tion and possession of Edmund Lansdown, son of the said E. the
plaintiff, party to the said indenture, together with all ways,
paths, passages, waters, water-courses, commons, easements,
profits, and appurtenances whatsoever to the said messuage or tene-
ment and premises belonging, or in any wise appertaining, to hold
the same with the appurtenances, to the said W. his executors,
administrators, and assigns, from the twenty-fifth day of March
next ensuing the date of the said indenture, for and during, and
unto the full end and term of fourteen years from thence next en-
suing and fully to be complete and ended, if the said E. the plain-
tiff, party to the said indenture, should happen so long to live, at
and under the yearly rent of seven pounds of lawful money of
Great Britain, payable half yearly, by half yearly and equal pay-
ments; and the said W. for himself, his executors, administrators
and assigns, did thereby covenant, promise, and grant to and with
the said E. the plaintiff, his executors, administrators, and assigns,
(amongst other things) in manner and form following, that is to
say, that he the said W. his executors, administrators, and assigns,
should and would keep and maintain the windows in good and suf-
ficient repair, and leave the same in such good and sufficient re-
pair at the end of the said term thereby granted, he the said E. the
plaintiff first putting the said windows in good and tenantable
condition; and also that he the said W. his executors, administra-
tors, and assigns, should not, during the said term thereby grant-
ed, commit or do, or cause to be committed and done, any wil-
ful spoil or waste to the said demised premises, or any part thereof
as by the said indenture (relation being thereunto had) will
amongst other things more fully appear; by virtue of which said
indenture the said W. afterwards, to wit, on the twenty-sixth day
of March 1773, entered into the said demised premises, with the
appurtenances, and became and was possessed thereof, and con-
tinued so possessed thereof, until the end and expiration of the said
term, when he the said W. quitted and yielded up possession of the
aforesaid demised premises, with the appurtenances, to the said E.
the plaintiff: And the said E. the plaintiff further says, that al-

though the said E. the plaintiff, afterwards, to wit, on the same twenty-sixth of March 1773, did put all and every the windows in the said demised premises into good and tenantable condition, to wit, at Taunton aforesaid, in the county aforesaid; and although he the said E. the plaintiff, always from the time of the making of the said indenture hitherto, hath done, performed, and fulfilled all and every thing in the said indenture mentioned, on his part and behalf to be done, performed, and fulfilled, to wit, at Taunton aforesaid, in the said county; yet protesting that the said W. hath not done, performed, and fulfilled, any thing in the said indenture contained, on his part and behalf to be done, performed, and fulfilled, he in fact says, that the said W. did not, after all and every the windows in the said demised premises had been put in good and tenantable condition by the said E. the plaintiff, as aforesaid, at any time during the continuance of the said term, keep and maintain the same in good and sufficient repair, but did, during all the term last aforesaid, permit and suffer the glass, lead, pullies, frames, and other parts of the said windows to be broken to pieces, ruinous, in decay, and out of repair, for want of necessary and needful reparation and amendment thereof, and the same being so broken to pieces, ruinous, in decay, and out of repair as aforesaid, at the end and expiration of the said term, delivered and yielded up to the said E. the plaintiff as aforesaid, contrary to the form and effect of the said indenture, and of the covenant of the said William so made in that behalf as aforesaid: And the said E. the plaintiff further in fact says, that the said W. after he became possessed of the said demised premises, and during the continuance of the said term, to wit, on the first day of January 1774, and on divers days and times between that day and the day of exhibiting the bill of the said E. the plaintiff did wittingly and willingly commit and do, and cause and procure to be committed and done, waste, spoil, and destruction upon the said demised premises, by then and there rooting up, grubbing up, stubbing up, prostrating, and felling divers trees, to wit, ten apple trees, ten pear trees, ten plumb trees, and ten cherry trees, of great value, to wit, of the value of fifty pounds, then growing and being in the orchard and garden, to the said demised premises belonging and appertaining; and part and parcel of the said demised premises, and taking and carrying away the same, and converting and disposing thereof to his own use; and also by then and there taking down and breaking down, prostrating, and destroying divers windows-shutters, to wit, six window-shutters, of and belonging to, and part and parcel of, and affixed to the said messuage, part and parcel of the said demised premises, and converted and disposed thereof, and the materials thereof coming to his own use; and also by then and there pulling down, throwing down, prostrating, and destroying divers partition walls, and other walls, to wit, two partition walls, and two other walls, which were then erected, built, and fixed in and upon the said premises, and the materials thereof coming, taking, carrying away,

COVENANT.—(EXECUTOR OF) DEVISEE

away, and converting and disposing thereof to his own use, to wit, at, &c. ; and so the said E. the plaintiff says, that the said W. (although often requested) hath not kept with him his said covenants made with the said E. the plaintiff, but hath broke the same, and to keep the same with the said E. the plaintiff, hath hitherto altogether refused, and still doth refuse, to the damage, &c. Pledges, &c.

Drawn by J. GRAHAM.

Declaration in ANGLESEA, to wit. Michael Parry, executor of the last covenant by an will and testament of Janet Hughes, widow, deceased, who was executor of a devisee of Michael Hughes, deceased, complains of William Williams, of a plea of breach of covenant ; for that whereas one lessee, who covenanted to Michael Hughes, since deceased, in his lifetime, that is to say, on keep the premises in repair, and not to set down any of the arable ground for grafs without being first sown with a quantity of clover ; for not repairing the hedges and premises ; and for yielding them up out of repair ; and that during the term he set down a part of the land for grafs without sowing any clover.

the said twelfth day of November 1770, at, &c. in, &c. and long before, was seised in his demesne as of fee of and in the premises hereinafter mentioned, and being so seised thereof, by a certain indenture made the said twelfth of November, in the said year of Our Lord 1770, between, &c. &c. [set forth the indenture, which was, that M. H. demised certain premises for a term of years to the defendant W. W. which he covenanted to keep in repair, and deliver them up at the end of the term in good repair, and that the defendant should not set down any of the arable ground for grafs without being first sown with a sufficient quantity of clover] as by the said indenture, amongst other things, more fully appears ; by virtue of which said demise he the said William Williams afterwards, to wit, on the said twelfth of November 1770, at Beaumaris aforesaid, in the said county, entered into and upon the said demised premises, with the appurtenances, and became and was possessed thereof, for the said term to him thereof demised as aforesaid, the reversion thereof expectant on the determination of the said demise, belonging to the said Michael Hughes, and his heirs, and assigns ; and the said William being so possessed, and the said Michael being so seised in his demesne as of fee of and in the said reversion as aforesaid, he the said Michael afterwards, to wit, on the fifth day of July, in the year of Our Lord 1780, at Beaumaris aforesaid, in the said county, duly made his last will and testament in writing, and thereby demised the said reversion of the said demised premises (amongst other things), with the appurtenances, to the said Janet Hughes and her assigns, for and during the term of her natural life, with divers remainders and limitations over, and afterwards, to wit, on the first of August 1780, at, &c. died, so seised of the said reversion of the said demised premises, without having altered or revoked his said will ; after whose death the said Janet, by virtue of the said devise, became and was seised of the said reversion of the said premises, with the appurtenances, so demised to the said William as aforesaid, in her demesne as of freehold, for and during the term of her natural life, and continued so seised thereof as aforesaid, continually from thence until, and at, and after the end and determination of the said term by the said indenture

denture granted: And the said Michael Parry, executor as aforesaid, in fact says, that afterwards, and in the lifetime of the said Janet, since deceased, and after she the said Janet became seised as aforesaid, he the said William did not, at his proper costs and charges, from time to time, during the continuance of the said term, well and sufficiently support, sustain, amend, and maintain the said several messuages, tenements, pieces or parcels of land, and premises by the said indenture demised, and all and every the aforesaid edifices and buildings, in and with all manner of needful and necessary reparations; nor did he the said William well and sufficiently hedge, ditch, keep, and maintain all the hedges, ditches, and inclosures of the said premises, in and with all manner of necessary reparations, from time to time, when and as often as occasion required, during the said term, nor all the said premises, so being well and sufficiently repaired, fenced, ditched, cleansed, made, and amended, did he yield up and leave at the end of the said term unto the said Janet, deceased, in her lifetime; but on the contrary thereof, the said William did, during the continuance of the said term, after the decease of the said Michael Hughes, and after the said Janet became seised as aforesaid, to wit, on the said first of August 1780, at, &c. permit and suffer the said messuages, tenement, pieces or parcels of land, and premises aforesaid, and all the aforesaid edifices and buildings, to be greatly ruinous and in decay in the doors, floors, windows, ceilings, wainscots, joists, and beams, for want of repairing and amending the same; and also permitted and suffered the said hedges, ditches, and inclosures of the said premises to be greatly ruinous and in decay, for want of necessary amending, fencing, scouring, and cleansing thereof, contrary to the form and effect of the said indenture, and the said covenant in the said indenture so made as aforesaid, and all the said premises so ruinous and in decay as aforesaid; he the said William afterwards, at the expiration of the said term, and after the decease of the said Michael Hughes, and after the said Janet became seised as aforesaid, and in her lifetime, delivered up and yielded up, contrary to the form and effect of the said indenture, and of the said covenant of the said William, so made as aforesaid: And the said Michael Parry further in fact says, that afterwards, and after the said Janet became so seised as aforesaid, and during the continuance of the said term, to wit, in the years of Our Lord 1780, 1781, 1782, 1783, 1784, and 1785, did rest, put by, and let down divers, to wit, two hundred acres of the arable land or ground, part and parcel of the said premises by the said indenture demised; yet the said William did not, at any time during the time last aforesaid, first, or at any other time whatsoever, sow the said arable land or ground so rested, put by, and let down as aforesaid, with a sufficient quantity of clover or common grafs-seed, meet and convenient for the preservation thereof, but on the contrary thereof, during all the time aforesaid, neglected and refused to sow any clover or common grafs-seed in and upon the said arable land so rested, put by, and let down as aforesaid,

aforesaid, contrary to the form and effect of the said indenture, and of the said covenant of the said William so by him made as aforesaid, to wit, at, &c. ; and so the said Michael Parry says, that the said William did not keep his said covenant so made with the said Janet, in her lifetime, or with the said Michael Parry, as executor as aforesaid, since her decease, but hath broken the same, and to keep the same with the said Janet, deceased, in her lifetime, and the said Michael Parry, as executor as aforesaid, since her decease, he the said William wholly refused, and still doth refuse, to the damage, &c. ; and the said Michael Parry brings here into court the letters testamentary of the said Janet Hughes, by which it sufficiently appears to the court here, that the said Michael Parry is executor of the last will and testament of the said Janet Hughes, deceased, and hath the execution thereof, &c. Pledges, &c.

Drawn by J. GRAHAM.

Declaration by assignees of lessor against assignees of lessor, for general dilapidations on a wharf, &c. and for not repairing a wall belonging to such wharf, after notice upon view, according to a power for that purpose.—Lessor possessed for a term, and one of the plaintiffs a devisee in remainder under his will, and a purchaser of a part of the reversion from another of such devisees, and one other plaintiff, purchaser from the assignees, under a commission of bankrupt issued against a person entitled to the other third in right of his wife.

W. R. the lessor possessed of premises for the residue of a term of 61 years from Sir H. T. bart,

MIDDLESEX, *ss.* W. T. late of, &c. assignee of Enos Smith and John Pittman, was summoned to answer S. J. R. and R. M. assignees of W. R. deceased, in a plea, that he keep with them the covenant made between the said W. R. and the said E. S. and J. P. for themselves and their assignees, according to the force, form, and effect of a certain indenture thereof made between the said W. R. of the one part, and the said E. S. and J. P. of the other part; and thereupon the said S. J. R. and R. M. by R. L. their attorney, complain, for that whereas the said W. R. before and at the time of the making of the indenture of lease, hereafter mentioned to have been made between him the said W. R. and the said E. S. and J. P. was lawfully possessed of the several premises thereby demised, with the appurtenances, for the rest, residue, and remainder of a certain term therein then to come and unexpired, to wit, the term of sixty-one years, commencing from the sixth day of April, which was in the year of Our Lord 1764, and theretofore thereof granted by Sir H. T. to the said W. R. by virtue of a certain indenture of lease thereof (amongst other premises), made between the said Sir H. T. of the one part, and the said W. R. of the other part, and bearing date, &c. ; and the said W. R. being so thereof possessed by a certain indenture of lease made in the lifetime of the said W. R. to wit, on, &c. to wit, at, &c. between the said William Reed, deceased, of the one part, and the said E. S. and J. P. of the other part (one part of which same indenture sealed with the seals of the said E. S. and J. P. and bearing date the day and year last aforesaid, they the said S. J. R. and R. M. now bring into court here), he the said W. R. for the considerations therein mentioned, did demise, lease, set, and to farm let unto the said E. S. and J. P. all that messuage or tenement and dwelling-house, and all and singular, &c. and all other erections and buildings usually held and enjoyed therewith, situate, standing, lying, and being, at or near a certain place called, &c. abutting and adjoining towards the west, &c. together

ther with all cellars, &c. whatsoever to the said messuage or tenement, or dwelling-house, buildings, &c. mentioned to be by the said last-mentioned indenture demised, belonging or in any wise appertaining, as by the said several premises were in the tenure or occupation of R. S. and then of the said E. S. and J. P. and were more plainly delineated and described in the plan or ground plot thereof unto the same indenture annexed, to have and to hold the said messuage, tenement, or dwelling-house, wharf, &c. and all singular other the premises mentioned to be thereby demised, with their and every of their appurtenances, unto the said E. S. and J. P. their executors, administrators, and assigns, from the feast day of the Annunciation of the blessed Virgin Mary then last past, for and during and unto the full end and term of fifty-nine years from thence next ensuing, and fully to be complete and ended; yielding and paying therefore yearly, and every year during the said term, unto the said W. R. his executors, administrators or assigns, the yearly rent or sum of forty-seven pounds of lawful money of Great Britain, the same to be paid during the said term of fifty-nine years upon the four most usual feasts or days of payment of rent in the year, that is to say, &c. by four even and equal portions the first payment thereof to begin and be made on, &c. then next ensuing the date of the said last-mentioned indenture; and the said E. S. and J. P. did by the said last-mentioned indenture for themselves severally, and for their several and respective executors, administrators and assigns, and for every of them, covenant, promise, and agree to, and with the said W. R. his executors, administrators, and assigns, in manner following, that is to say, that they the said E. S. and J. P. or one of them, their, or one of their executors, administrators, or assigns, or some or one of them, should or would at his, their, some or one of their own proper costs and charges at all times during the said term by the said last-mentioned indenture granted, as often as need should require, well and sufficiently repair, uphold, support, maintain, amend, pave, purge, scour, cleanse, empty, and keep the said demised premises, with the appurtenances, and all new erections and buildings which should be erected on the said demised premises during the term by the said last-mentioned indenture demised, and the brick wall at the east-end of the said thereby demised premises called, &c. and all other brick walls and fences of and belonging, or thereafter to belong to the same; and all the pavements, posts, &c. thereto belonging, or which should thereafter belong to the same, with all manner of needful and necessary reparations, cleanings, scourings, and amendments whatsoever, and all new erections and buildings which should be erected as aforesaid (damages happening to the same premises, or any part thereof by fire only excepted), and the said demised premises, with the appurtenances, so being in all things well and sufficiently repaired, uphold, supported, maintained, amended, paved, &c. (except as before excepted), together with all the doors, &c. and all other things which then were, or which at any time thereafter during the term thereby granted, should be any ways fixed or fastened

Habendum for 39 years, from, &c. &c.

Reddendum,

Covenant,

COVENANT.—(ASSIGNEE OF) LESSOR

Another covenant.

Lessee's entry.

Lessor make his will, and devises the reversion to his wife for life, remainder to future appointment by codicil.

In default of appointment, to his sons, &c. Appointment of executors.

fastened to, or set up in, or upon the said demised premises, or any part thereof, or belonging to the same, should and would at the end, expiration, or other sooner determination of the term thereby granted, peaceably and quietly surrender and yield up unto the said W. R. his executors, administrators, or assigns; and moreover, that it should and might be lawful as well to and for the said W. R. his executors, administrators, and assigns, as for the head landlord or landlords of the said thereby demised premises for the time being, with or without workmen, or others in his or their company, four times in the year during the said term, at seasonable and convenient times in the day time, to enter and come into and upon the said premises, by the said last-mentioned indenture demised, or the appurtenances or any part or parcel thereof to view, search, and see the state and conditions of the repairs thereof, and of all such decays, defects, and wants of repairs as should be then and there found, to give or leave notice or warning thereof in writing at the said demised premises to or for the said E. S. and J. P. for themselves, their executors, administrators, and assigns, to repair and amend the same within the space of three months then next following, within which said time or space of three months then next after such notice or warning so given or left as aforesaid, they the said E. S. and J. P. for themselves, their executors, administrators, and assigns, did by the said last-mentioned indenture, covenant, promise, and agree to and with the said W. R. his executors, administrators, and assigns, to repair, amend, and make good all and every such decays and wants of reparation accordingly (damages happening thereto by fire as aforesaid excepted), as by the said last-mentioned indenture, reference being thereunto had, may (amongst other things) more fully and at large appear; by virtue of which said last-mentioned demise, they the said E. S. and J. P. entered into all and singular the said demised premises, with the appurtenances, and became and were thereof possessed for the said term so to them thereof demised as aforesaid (the reversion thereof, with the appurtenances belonging, to the said W. R.); and being so possessed thereof, and the said reversion thereof, with the appurtenances belonging to the said W. R. as aforesaid, he the said W. R. after the making of the said demise, to wit, on, &c. at, &c. duly made his last will and testament in writing, and did thereby (amongst other things), give and bequeath unto his then wife, A. R. for and during the term of her natural life, his said reversion of and in the said premises so by him demised to the said E. S. and J. P. as aforesaid, with the appurtenances; and from and after the decease of his said wife, he thereby willed and directed that the said reversion (and premises so therein before by him given and bequeathed to his said wife, for and during her said life), should be applied and disposed of in such manner as he should, by any codicil to that his will, direct and appoint; and for want of such codicil, direction, or appointment, to the use and benefit of his sons, J. R. and the said S. J. R. and his daughter M. E. (the wife of D. E. therein before married), share and share alike as tenants in common, and not as joint tenants; and the said W. R. did by his said

faid will appoint his faid two fons J. R. and S. J. R. and his fons-in-law H. D. and D. E. joint executors of his faid will, and afterwards, to wit, on, &c. at, &c. the faid W. R. died fo entitled to the reverfion of the faid demifed premifes, with the appurtenances, and without altering or revoking his faid will, or by any codicil thereto, directing or appointing, or in any manner revoking or altering his faid bequeft and direction as to the faid reverfion (after the death of his faid wife A. R.); and upon the death of the faid W. R. his faid will was duly proved by the faid J. R. and S. J. R. two of the executors therein named, who then and there, to wit, on, &c. at, &c. affented to the faid bequeft fo thereby made as aforefaid; and the faid A. R. thereupon became and was intituled to the aforefaid reverfion of and in the faid demifed premifes, with the appurtenances, for and during her natural life, the further reverfion thereof, with the appurtenances, upon the death of the faid A. R. belonging to the faid J. R. S. J. R. and D. E. and M. his wife, in right of the faid Mary, as tenants in common thereof, that is to fay, to the faid J. R. as to one undivided third part thereof, to the faid S. J. R. as to one other undivided third part thereof, and to the faid D. E. and M. his wife, in right of the faid M. as to the other undivided third part thereof; and the faid A. R. remained and continued fo intituled unto the faid reverfion of and in the faid demifed premifes, with the appurtenances, until afterwards, to wit, on, &c. when fhe the faid A. R. died, to wit, at the parifh, &c. upon whose death the faid J. R. S. J. R. and D. E. and M. his wife, in right of the faid M. became and were entitled to and poffeffed of the faid further (or then remaining) reverfion of and in the faid demifed premifes, with the appurtenances, as fuch tenants in common thereof as aforefaid, that is to fay, the faid J. R. of one undivided third part thereof, the faid S. J. R. of one other undivided third part thereof, and the faid D. E. in right of his faid wife, and fubject to his difpofition of the other undivided third part thereof, to wit, at the parifh, &c. in the county, &c.; and the faid S. J. R. and R. M. in fact further fay, that the faid D. E. and M. his wife, in right of the faid M. being fo intituled to the faid reverfion of and in one undivided third part of the faid demifed premifes, with the appurtenances as aforefaid, he the faid D. E. afterwards, and whilst he was fo intituled, to wit, on, &c. at, &c. became and was a bankrupt within the true intent and meaning of the feveral ftatutes made and then in force concerning bankrupts fome or one of them; and being fo bankrupt, a certain commiffion of bankrupt under the great feal of Great Britain, bearing date at Weftminfter, the fame day and year laft aforefaid, was thereupon awarded and iffued forth againft the faid D. E. directed to T. B. &c. gentlemen, to whom the fame was then and there delivered, and by which faid commiffion our faid lord the king gave full power and authority to the faid T. B. &c. three or four of them to proceed according to the ftatutes concerning bankrupts, not only concerning the faid bankrupt his body, lands, and tenements, both freehold and copyhold, goods

Dies without making a codicil.

Will proved by two executors, who affented to bequeft. Widow became entitled for life.

Widow dies. Plaintiff and other remainder men became entitled.

D. E. becomes a bankrupt.

Commiffion.

Reversional assignment of D. E.'s third part of the reversion in right of his wife,

Reversional assignee become entitled to such third part.

Choice of assignees under the commission.

goods, debts, and all other matters whatsoever, but also concerning all other persons who by concealment, claim, or otherwise, should offend touching or concerning the premises, or any part thereof, against the true intent and purport of the said statutes, and to do and execute all and every thing or things whatsoever, as well for and towards satisfaction and payment of the creditors of the said D. E. as towards and for all other intents and purposes whatsoever, according to the order and provision of the said statutes, as by the said commission (amongst other things) more fully appears; and the said S. J. R. and R. M. further say, that the said D. E. having so become and still continuing to be such bankrupt as aforesaid, afterwards and after the issuing the commission of bankrupt, to wit, on, &c. by a certain indenture then and there made, and bearing date the day and year last aforesaid, between the said T. B. &c. the major part of the commissioners named and authorised in and by the said commission of the one part, and one D. C. of the other part, they the said commissioners, parties to the said last-mentioned indenture, by force and virtue of the said commission, and of the said several acts of parliament, and for other considerations therein mentioned, did appoint the said D. C. assignee of the estate and effects of the said D. E. and did also thereby order, bargain, sell, dispose, assign, and set over unto the said D. C. (amongst other things), the said undivided third part of the said reversion of and in the said demised premises, with the appurtenances, to which the said D. E. and M. his wife, in right of the said M. were so entitled as aforesaid, at the time of the said D. E. so becoming bankrupt as aforesaid, to hold the same, with the appurtenances, unto the said D. C. his executors, administrators, and assigns, in trust, for the immediate preservation thereof, and to and for the use, benefit and advantage of all the creditors of the said D. E. who had then already sought, or should thereafter in due time come in and seek relief under the said commission, according to the several statutes therein mentioned, or some or one of them, and to and for no other use, trust, intent, or purpose whatsoever; by virtue of which said assignment all the estate and interest which were of the said D. E. and M. his wife, in right of the said Mary, of and in the said undivided third part of the aforesaid reversion of and in the said demised premises, with the appurtenances, at the time of the said D. E. becoming bankrupt as aforesaid, then and there became and were vested in the said D. C. and being so vested, and the said D. E. still continuing bankrupt as aforesaid, and J. B. and P. N. having been chosen assignees of the estate and effects of the said D. E. as such bankrupt as aforesaid, according to the form of the statute in such case made and provided afterwards by a certain other indenture made and bearing date, &c. between the said D. C. of the first part, the said T. B. &c. the major part of the said commissioners named and authorised in and by the said commission of bankrupt, of the second part, and the said J. B. and P. N. of the third part, he the said D. C. by the direction of the major part of said commissioners,

in

in and by the said commission named and authorised (testified as therein is mentioned), did (for the considerations therein specified), order, bargain, sell, assign, and set over unto the said J. B. and P. N. their executors, administrators, and assigns (amongst other things), the said undivided third part of the said reversion of and in the said demised premises, with the appurtenances, to which the said D. E. and M. his wife, in right of the said M. were so intitled as aforesaid, at the time of the said D. E. so becoming bankrupt as aforesaid: And the said commissioners, parties to the said last-mentioned assignment (being the major part of the said commissioners in and by the said commission named and authorised), did (for the considerations in such assignment mentioned), ratify and confirm unto the said J. B. and P. N. their executors, administrators, and assigns, such undivided third part of the said reversion, with the appurtenances (amongst other premises), to hold the same, with the appurtenances unto the said J. B. and P. N. their executors, administrators, and assigns, upon trust, nevertheless for the use, benefit, satisfaction, and payment of all and every the creditors of the said D. E. who had then already sought, or should thereafter in due time come in and seek relief under and by virtue of the said commission, according to the directions and limitations of the several statutes therein mentioned, and in that behalf made and provided, by virtue of which said last-mentioned assignment they the said J. B. and P. N. as such assignees of the estate and effects of the said D. E. as aforesaid, then and there became and were at the time of the execution of the indenture hereafter next mentioned, legally intitled to the said one undivided third part of the reversion of and in the said demised premises, with the appurtenances, to which the said D. E. and M. his wife, in right of the said M. were so as aforesaid intitled at the time of the said D. E. so becoming bankrupt as aforesaid, and the said S. J. R. and R. M. in fact further say, that the said J. B. and P. N. being so intitled to the said undivided third part of the said reversion, so to them assigned as aforesaid, by a certain other indenture made, &c. at, &c. between the said J. B. and P. N. of the one part, and the said R. M. of the other part (one part of which said last-mentioned indenture, sealed with the seals of the said J. B. and P. N. and bearing date the day and year last aforesaid, the said S. J. R. and R. M. now bring into court here), they the said J. B. and P. N. for the consideration in the said last-mentioned indenture specified, did, and each of them did bargain, sell, assign, transfer, and set over rents to the said R. M. his executors, administrators, and assigns (amongst other things), the one undivided third part of the said reversion of and in the said demised premises so to them assigned as aforesaid, and all the estate and interest of them the said J. B. and P. N. therein, to hold the same, with the appurtenances, unto the said R. M. his executors, administrators, and assigns, from thenceforth for and during all the then rest, residue, and remainder of the said term of sixty-one years, so granted by the said indenture of lease of, &c. hereinbefore mentioned,

Farther] assignment to such assignees.

Assignees become entitled.

Assignees convey D. E.'s third part to plaintiff R. M.

Plaintiff R. M. becomes entitled to a third part of the reversion.

J. R. one of lessors devisees, assigns his third part to the plaintiff S. J. R.

Whereby he becomes entitled to that third part, as well as to his own third part.

Lessee's interest comes to defendant by assignment.

mentioned, by virtue of which said last-mentioned assignment, the said R. M. then and there, to wit, on the day of the date of the said last-mentioned assignment, at the parish aforesaid, in the county aforesaid, became and was and from thence hitherto hath been and still is entitled to the said undivided third part so to him assigned as aforesaid of the said reversion, with the appurtenances, of and in the aforesaid demised premises, with the appurtenances: And the said S. J. R. and R. M. in fact further say, that the said J. R. being so intitled to one undivided third part of the said reversion of and in the said demised premises as aforesaid, with the appurtenances, afterwards and whilst he was so intitled by certain articles of agreement, indented, made, and fully agreed upon, the seventh day, &c. at, &c. between them the said J. R. of the one part, and the said S. J. R. of the other part (one part of which said articles, sealed with the seal of the said J. R. and bearing date the day and year last aforesaid, the said S. J. R. and R. M. now bring into court here), he the said J. R. for the considerations therein mentioned, assigned, assured, and set over unto the said S. J. R. (amongst other premises) all that his the said J. R.'s one undivided third part of the said reversion of and in the said demised premises, with the appurtenances, to hold the same with the appurtenances, unto the said S. J. R. his executors, administrators, and assigns, from thenceforth for and during all the term, estate, and interest of the said J. R. therein or thereunto; by virtue of which said last-mentioned assignment he the said S. J. R. then there became, and was and still is entitled to the said undivided third part of the said reversion so assigned to him by the said J. R. as aforesaid, and so from thence hitherto hath remained and continued, and still remains and continues so entitled to the said undivided third part of the said reversion so assigned to him as aforesaid, as well as of the said undivided third part so vested in him under and by virtue of the said will of the said W. R. as aforesaid, to wit, at, &c.: And the said S. J. R. and R. M. in fact further say, that afterwards, and during the said term so demised to the said E. S. and J. P. as aforesaid, to wit, on, &c. at, &c. all the estate, right, title, term of years then to come and unexpired, property, interest, claim, and demand whatsoever of them the said E. S. and J. P. of in and to the said premises so to them demised as aforesaid, with the appurtenances, by assignment thereof then and there made, legally came to and vested in the said W. T.; by virtue whereof the said W. T. afterwards, to wit, on, &c. at, &c. entered into the said demised premises, with the appurtenances, and became and was from thence, and hitherto hath been, and still is thereof possessed, for the rest, residue, and remainder of the said term so thereof demised to the said E. S. and J. P. as aforesaid, the reversion thereof belonging to the said S. J. R. and R. M. in such several parts and proportions thereof as last aforesaid, to wit, at, &c.; and although they the said S. J. R. and R. M. have always since they so became entitled to the said reversion of and in the said premises so demised to the said E. S. and J. P. in such parts and proportions

tions thereof as last aforesaid, hitherto, well and truly performed and fulfilled all things in the said indenture of lease thereof to them the said E. S. and J. P. contained, on the part and behalf of the said W. R. and his assigns to be performed and fulfilled, according to the tenor and effect, true intent and meaning of the said last-mentioned indenture; yet protesting that the said W. T. since the said assignment of the said demised premises unto him the said W. T. as aforesaid, hath not performed or fulfilled any thing in the said last-mentioned indenture contained, on the part and behalf of the said E. S. and J. P. and their assigns, to be performed and fulfilled, they the said S. J. R. and R. M. in fact say, that whilst they were so entitled to the said reversion of and in the said demised premises in such parts and proportions thereof as last aforesaid, and since the said assignment of the said demised premises unto him the said W. T. as aforesaid, to wit, on, &c. the said demised messuage or dwelling-house, together with the stables, &c. thereto belonging, and parcel of the said demised premises, were out of repair, ruinous, and in great decay in the walls, &c. and in other parts and particulars thereof, for want of needful and necessary repairing, amending, and upholding thereof; and the said demised wharf was then and there out of repair and in decay in the land, &c. and in the ground and soil and other parts and particulars thereof, for want of needful and necessary repairing, amending, and upholding the same, and the drains, &c. of and belonging to the said demised premises, were stopped up and obstructed, filled up and choaked for want of needful and necessary cleansing and scouring thereof, and all and singular the gates, posts, pales, &c. thereof were ruinous, prostrate, broken down, and in great decay, for want of needful and necessary repairing, &c. thereof, and so from thence hitherto hath remained and continued, and in particular the said S. J. R. and R. M. say, that the said brick wall in the said last-mentioned indenture particularly mentioned and described, and called the wharf-wall, was on the day and year last aforesaid, greatly ruinous and out of repair, &c. contrary to the tenor and effect of the said last-mentioned indenture of lease, and of the covenant of the said E. S. and J. P. in that behalf made as aforesaid, to wit, at, &c.: And the said S. J. R. and R. M. in fact further say, that whilst they were so respectively entitled to the said reversion of and in the said premises so demised to the said E. S. and J. P. in such parts and proportions thereof as last aforesaid, and after the said assignment of the said demised premises to the said W. T. as aforesaid, to wit, on, &c.; that they the said S. J. R. and R. M. at a convenient and seasonable time, in the day time, and under and by virtue of the power for that purpose contained in the said last-mentioned indenture, did with workmen enter and come into and upon the said wharf, parcel of the said demised premises, to view, search, and see the state and condition of the repairs thereof, and upon such entry and view, the said wall, called the wharf-wall hereinbefore mentioned, was then and there found to be so ruinous, &c. for want of needful and necessary

Protestation.

Breach.

Conclusion.

sary repairing, amending, and upholding thereof as aforesaid, and to then and there want repairs, in this, to wit, that the said wall then and there required, and it was necessary and proper to take down and rebuild the same from the top unto the level thereof; whereof and of which said decay, defect, and want of reparation so then and there found by them the said S. J. R. and R. M. as aforesaid, they the said S. J. R. and R. M. afterwards, to wit, on, &c. at, &c. left and gave notice and warning in writing at the said demised premises for the said W. T. and by such notice did then and there require him the said W. T. to repair and amend the said wall accordingly, and pursuant and according to the aforesaid covenant of the said E. S. and J. P. in that behalf made as aforesaid, within the space of three months then following: Yet the said S. J. R. and R. M. in fact further say, that the said W. T. did not, within the said time or space of three months next after the said notice or warning so given and left for and to him the said W. T. as aforesaid, repair, amend, and make good the said decay, &c. in and as to the said wall, according to the said notice or warning, or in any other manner whatsoever, but omitted and neglected so to do, and on the contrary thereof, continued and suffered, and permitted the said wall to be, remain, and continue, and the same still is ruinous, &c. for want of needful, &c. as aforesaid, contrary to the tenor and effect, intent and meaning of the said last-mentioned indenture of lease, and of the covenant of the said E. S. and J. P. in that behalf made as aforesaid, to wit, at, &c.; and so the said S. J. R. and R. M. say, that the said W. T. (although often requested) hath not kept with them the covenant made between the said E. S. and J. P. for themselves and their assigns, and the said W. R. deceased and his assigns, but hath broken the same, and to keep the same with the said S. J. R. and R. M. hath wholly refused, and still refuses, to the damage of the said S. J. R. and R. M. of two hundred pounds; and therefore they bring their suit.

V. LAWES.

Declaration in
covenant, Lessor
v. Administratrix
of lessee, for
the non-pay-
ment of rent for
lands.

NORFOLK, to wit. R. K. complains of P. B. widow, administratrix of all and singular the goods and chattels, rights and credits, which were of J. B. deceased, at the time of his death, who died intestate, being, &c. in a plea of breach of covenant; for that whereas by certain articles of agreement indented, made, concluded, and agreed upon in the lifetime of the said J. B. deceased, to wit, on, &c. at, &c. between the said P. B. (by the name and description therein mentioned) of the one part, and J. S. T. B. H. G. the said J. B. deceased, M. B. W. B. &c. &c. (by their several and respective names and descriptions therein also mentioned) of the other part (one part of which said indenture, sealed with the seal of the said J. B. the said plaintiff now brings here into court, the date whereof is the day and year aforesaid), reciting amongst other things, that whereas, &c. &c. [recite such part of the articles as is necessary to explain the testator's covenant;

covenant; then recite the covenants which the testator has broken, and which are as follow] did for themselves, &c. jointly, &c. and for his heirs, &c. covenant, &c. in manner following, that they and every of them, and every of their heirs, &c. should and would, on, &c. then next ensuing, and also upon each and every tenth day of, &c. in every succeeding year, during the said term of twelve years, well and truly pay, or cause to be paid to the plaintiff, his executors, &c. the sum of one shilling and sixpence an acre for every acre of land lying in the said parish of, &c. which he, she, or they, or his, her, or their heirs, &c. on or upon any of the said days of payment during the said term, should for the year severally take to farm, or have in occupation as owner or tenant thereof, and so in proportion for any less quantity than an acre; and also that for every twenty shillings to be paid as aforesaid, as a consideration for the said shackage, and over and above the same, they the said J. S. and the others, whose hands and seals were and are to the said articles of agreement subscribed and set, their heirs, &c. should and would also pay to the said plaintiff, his executors, &c. yearly and every year, upon the several days above mentioned and appointed for payment of the said shackage money, such a proportional sum of money as they should at the same time pay or be charged with, for every twenty shillings which their respective lands in their occupations in the said parish should be assessed at, in, or by the poor rate there, and so in proportion for any less sum, as by the said articles of agreement, relation being thereto had will amongst other things more fully and at large appear: And the said plaintiff in fact says, that the said J. B. after the making of the said articles of agreement, and during the said term of twelve years therein mentioned, to wit, on, &c. died intestate, after whose death, and during the said term of twelve years, administration of all and singular the goods and chattels, rights and credits, which were of the said J. B. deceased, at the time of his death, was duly committed to the said defendant, to wit, at, &c.: And the said plaintiff in fact further saith, that the said J. B. during the said term of twelve years in the said articles of agreement mentioned, that is to say, A. D. 1787, and from thence until and at the time of his death, had in his occupation, as tenant thereof, divers, to wit, sixty-seven acres of the said half year land in the said articles mentioned, lying and being in the said parish of, &c.; and although upon the death of the said J. B. the said land and the estate and interest of him the said J. B. therein, as such tenant thereof as aforesaid at the time of his death, came to and vested in the said defendant as such administratrix as aforesaid; and although the said defendant, as such administratrix as aforesaid, thereupon entered into and became and was, and from thence hitherto hath been and still is, in the occupation thereof, as tenant thereof; and although she the said defendant hath always since the death of the said J. B. occupied and enjoyed the said land, freed and discharged from the exercise of the said right of common, feeding, or shackage, to which the said plain-

COVENANT.—LESSOR v. (ADMINISTRATRIX

tiff was so entitled as aforesaid, and hath always used and occupied the same as whole year land, and fed and depastured the same accordingly, pursuant to the terms of the aforesaid articles of agreement in that behalf; and although upon the said tenth day of, &c. to wit, at, &c. a large sum of money of the said shackle money, or yearly sum of one shilling and sixpence in the said articles mentioned, to wit, the sum of five pounds, being at and after the rate of one shilling and sixpence an acre, for each and every acre of the said half year land so occupied by the said J. B. and defendant as aforesaid, became and was due, owing, and payable from the said defendant, as such administratrix as aforesaid, to the said plaintiff for the then next ensuing year of her occupying the said lands, as such tenant thereof, to wit, the year next ensuing the said tenth day of, &c. A. D. 1788: And although he the said plaintiff hath always, from the time of the making of the said articles of agreement, well and truly performed and fulfilled, all things therein on his part and behalf to be performed and fulfilled, according to the tenor and effect, true intent and meaning of the said articles of agreement, to wit, at, &c.; yet protesting that the said defendant, administratrix as aforesaid, since the death of the said J. B. hath not performed or fulfilled any thing in the said articles of agreement contained, on the part and behalf of the said J. B. and his administrators to be performed and fulfilled, the said plaintiff in fact saith, that the said defendant did not, upon the said tenth day of, &c. A. D. 1788, at, &c. or at any other time, pay to the said plaintiff the said sum of money so on that day becoming and being due and payable to him the said plaintiff for and in respect of the said half year land, so by her and the said J. B. respectively occupied as aforesaid, but omitted and neglected so to do, and suffered and permitted the same to become and be, and the same still is in arrear, owing, and unpaid to him the said plaintiff, contrary to the tenor and effect of the said articles of agreement, and of the said covenant of the said J. B. in that behalf made as aforesaid, to wit, at, &c.: And the said plaintiff in fact further saith, that although upon the said tenth day of, &c. in the said year 1788, the said defendant paid, and was then and there rated, assessed, and charged to the poor in and of the said parish of, &c. for and in respect of the said lands so by her occupied as aforesaid, at a certain rate, to wit, at the rate of four shillings in the pound or for every twenty shillings; whereof the said defendant then and there had notice: Yet the said defendant did not upon the said tenth day of, &c. in the year 1788 aforesaid, or at any other time, pay, or cause to be paid to the said plaintiff, over and above every twenty shillings so by virtue of the said articles to be paid for the said shackle therein mentioned as aforesaid, such a proportional sum of money as she the said defendant so at that time paid and was charged with, for every twenty shillings which the said lands so then in her occupation as aforesaid were then and there assessed at in and by the poor rate there as aforesaid, but then and there wholly refused and neglected so to do, and a large sum of money, to wit,

wit, the sum of twenty shillings, is still wholly due, in arrear, and unpaid from the said defendant as such administratrix as aforesaid, for and in respect of such proportional payment as aforesaid to the said plaintiff for the said year of the said term of twelve years in the said articles mentioned next ensuing the said tenth day of, &c. in the year 1788 aforesaid, contrary to the tenor and effect, true intent and meaning of the said articles of agreement, and of the said covenant of the said J. B. in that behalf made as aforesaid, to wit, at, &c.: and so the said plaintiff saith, that the said defendant, administratrix as aforesaid, hath not kept with him the said plaintiff the covenant so made by the said J. B. for himself and his administrators as aforesaid, but hath broken the same, and to keep the same with the said plaintiff she the said defendant, administratrix as aforesaid, hath hitherto wholly neglected and refused, and still refuses. Damage. Suit. Pledges.

V. LAWES.

First, *Non est factum*; second, and for further plea as to the said breach of covenant first above assigned, the said defendant, by leave of, &c. *actio non*; because she says, that she the said defendant, on the said tenth day of, &c. A. D. 1788, at, &c. did well and truly pay to the said plaintiff the sum of one shilling and sixpence an acre for every acre of half year land lying in the said parish of, &c. which she upon the said tenth day of &c. in the year last aforesaid, did for the year then ensuing take to farm or had in occupation as owner or tenant thereof, and so in proportion for any less quantity than an acre, according to the form and effect of the said articles of agreement, and of the covenant of the said J. B. therein in that respect contained; and of this the said defendant puts herself upon the country, &c.: And for further plea as to the said breach of covenant lastly above assigned, the said defendant by like leave, &c. *actio non*; because she says, that the said defendant, on the said tenth day of, &c. A. D. 1788, at, &c. did pay to the said plaintiff over and above every twenty shillings, so by virtue of the said articles to be paid for the said shackle therein mentioned, such a proportional sum of money as she was at that time charged with or paid for every twenty shillings which the lands in her occupation in the said parish were assessed at in or by the poor rate there, and so in proportion for every less sum, according to the form and effect of the said articles of agreement, and of the covenant of the said J. B. therein in that behalf mentioned; and of this the said defendant puts herself upon the country, &c.: And for further plea &c. &c. [A plea of set off for goods sold.]

S. LE BLANC.

Mr. LAWES drew the replication to the last plea by adding the *similiter* to the three first pleas and replying to the last,

that plaintiff was not indebted to defendant *in modo et forma* as defendant hath in his last plea alledged.

Declaration by assignee by purchase under a private act of parliament against assignee of lessee, for non-payment of rents, not repairing, yielding up premises out of repair, ploughing up more than half of the land, converting into tillage marshes and marsh ground, whereby, &c. &c. &c.

Lesser and wife seised for lives and survivor, with reversion in fee to heirs of wife; she dying without issue, &c. &c. &c.

Lease to W. A. and P. A. granted.

Indorsement on the lease.

Lessees enter, were possessed.

H. N. dies, wife surviving she solely seised.

She dies without issue.

MIDDLESEX, to wit. Samuel Lindrell, late of, &c. assignee of W. A. and P. A. was summoned to answer James Thobald, assignee of H. N. and S. his wife, in a plea that the said defendant keep with him the said plaintiff the covenants made between the said H. N. and S. his wife, and the said W. A. and P. A. according to the force, form, and effect of a certain indenture thereof made between the said H. N. and S. his wife, and the said W. A. and P. A. and thereupon the said plaintiff, by A. B. his attorney, complains, that whereas before and at the time of the making of the indenture of lease hereafter mentioned to have been made by the said H. N. and S. his wife, to the said W. A. and P. A.; the said H. N. and S. his wife were jointly seised, to wit, in their demesne as of freehold, for the term of their natural lives, and the life of the survivors of them, with reversion in fee, to wit, to the heirs of the said S. if she died without leaving issue of her body by the said H. N. lawfully begotten, of and in the several premises hereinafter mentioned to have been demised by them the said H. N. and S. to the said W. A. and P. A. and being so thereof seised by a certain indenture made the, &c. at, &c. between the said H. N. and S. his wife, by the names of, &c. (the counterpart, &c. *profert in curia*) the said H. N. and S. his wife, in consideration, &c. did demise, &c. (recite the indenture as far as the end of covenants, in which you assign breaches, and then go on as follows): And the said plaintiff further says, that by a certain indorsement made on the back of the aforesaid recited indenture of lease, at the time of the execution of the aforesaid indenture of lease the said H. N. and S. his wife did consent, &c. (here recite the indorsement, and then go on as follows), as by the said recited indenture and indorsement so therein made as aforesaid, relation being thereunto had, may amongst other things more fully and at large appear; by virtue of which said demise they the said W. A. and P. A. afterwards, to wit, on, &c. at, &c. entered into all and singular the said demised premises, with the appurtenances, and were thereof possessed for the said term to them thereof demised as aforesaid, the reversion thereof, with the appurtenances belonging, to the said H. N. and S. his wife; and the said H. N. and S. being so seised of the said reversion, with the appurtenances, and the said W. A. and P. A. being so possessed of the said demised premises, with the appurtenances as aforesaid, he the said H. N. to wit, on, &c. at, &c. died, and the said S. N. survived him, by means whereof the said S. N. became solely seised of the said reversion, with the appurtenances, to wit, for the term of her natural life, with such reversion in fee, and the said S. N. being solely seised, she the said S. N. afterwards and whilst the said W. A. and P. A. were possessed of the said demised premises, with the appurtenances, to wit, on, &c. at, &c. died so seised of the said reversion, with the appurtenances, without leaving any issue, of her body lawfully begotten by the said H. N. upon whose death the said reversion of the said demised premises,

premises, with the appurtenances, descended and came to B. J. and M. J. wife of P. J. formerly M. J. as heirs at law of the said S. N.; by means whereof the said B. J. M. J. and M. his wife, in right of the said M. became and were seised in their demesne as of fee, of and in the said reversion with the appurtenances, to wit, at, &c.: And the said plaintiff further says, that the said P. J. and M. his wife, and B. J. being so respectively seised of the said reversion, with the appurtenances as aforesaid, and the said W. A. and P. A. being so possessed of the said demised premises, with the appurtenances as aforesaid, afterwards, to wit, on, &c. a marriage was intended to be had and solemnized between the said B. J. and one W. W. R.; and thereupon afterwards, to wit, on, &c. by a certain indenture of bargain and sale then and there made between the said B. J. of the one part, and R. R. and J. Q. of the other part (one part of which said indenture, &c. &c.) the said B. J. for the considerations therein mentioned, bargained and sold one undivided moiety of the said reversion, with the appurtenances (amongst other things) to the said R. R. and J. Q. to have and to hold the same unto the said R. R. and J. Q. their executors, &c. from the day next before the day of the date of the said indenture of bargain and sale, for and during, and unto the full end and term of one whole year from thence next ensuing, and fully to be complete and ended, as by the said indenture of bargain and sale, relation being thereto had may more fully appear; by virtue of which said indenture of bargain and sale, and by force of the statute made for transferring uses into possession, the said R. R. and J. Q. became and were possessed of the said undivided moiety of the said reversion, with the appurtenances, for the said term to them thereof granted as aforesaid, the further reversion thereof, with the appurtenances, belonging to the said B. J. and his heirs and assigns; and being so thereof possessed, and the said further reversion thereof, with the appurtenances, belonging as aforesaid, afterwards, to wit, on, &c. by a certain indenture of release *quadrupartite* then and there made between the said W. W. R. of the first part, the said R. J. of the second part, the said R. R. and J. Q. of the third part, and J. J. and A. H. of the fourth part (the one part of which said last-mentioned indenture, sealed with the seals of the said W. W. R. and R. J. he the said plaintiff, &c. &c. reciting the said intending marriage), she the said B. J. with the consent of the said W. W. R. testified by his being a party to and executing the said indenture released the said further reversion of the said undivided moiety, with the appurtenances (amongst other things), to the said R. R. and J. Q. to have and to hold the same to the said R. R. and J. Q. their heirs and assigns, to such uses, upon such trusts, and for such purposes as are in the said indenture in that behalf expressed, and amongst others, from the time of the said marriage taking effect, in trust for the said W. W. R. for and during the term of his natural life, but subject to a certain proviso therein contained, whereby it was covenanted, by and between the parties thereto,

Descent of the reversion to B. J. and M. J. as heirs at law, &c. &c.

B. J. M. J. and M. in right of M. his wife, became seised, &c. &c.

Recital of a marriage intended to be had between B. J. and W. W. R.

Lease for a year between B. J. and R. R. and J. Q. of an undivided moiety of the reversion.

R. R. and J. Q. possessed of the moiety of the reversion for one year the reversion in B. J.

Release from B. J. of the moiety to R. R. and J. Q.

In trust for W. W. R. subject to a proviso, enabling the releasees to sell, &c. &c.

R. R. and J. Q.
seised.

Marriage be-
tween W. W. R.
and B. J.

Indenture be-
tween P. J. and
M. his wife, and
M. S. and cove-
nant to levy a
fine to M. S. &c.

For the use of
the said M. S.
in trust for the
said P. J. his
heirs and assigns,
&c.

Fine levied.

P. J. dies,

that the said R. R. and J. Q. with the consent of the said W. W. R. and B. might sell and dispose of the said undivided moiety of the said reversion, with the appurtenances, for the best price that could be got for the same, as by the said indenture of release, relation being thereto had may more fully appear; by means whereof, and by force of the statute made for the transferring of uses into possession, the said R. R. and J. Q. afterwards, to wit, on, &c. became and were seised in their demesne, as of fee of and in the said undivided moiety of the said reversion, with the appurtenances, as aforesaid, with power to sell the same as aforesaid: And the said plaintiff further saith, that afterwards, to wit, on, &c. the said intended marriage between the said W. W. R. and R. J. took effect, and was had and solemnized, to wit, at, &c.: And the said plaintiff further saith, that the said R. R. and J. Q. being so seised of one undivided moiety of the said reversion, with the appurtenances as aforesaid, with power to sell the same as aforesaid; and the said P. J. and M. his wife, in right of the said M. being so seised of the said other undivided moiety of the said reversion, with the appurtenances as aforesaid, afterwards, to wit, on, &c. by a certain indenture then and there made between the said P. J. and M. his, &c. of the one part, and M. S. of, &c. of the other part (one part of which said indenture, sealed, &c. &c. the said P. J. did covenant, and the said M. did consent and agree to acknowledge and levy unto the said M. S. and his heirs, a fine *sur connusance de droit*, &c. of all the said undivided moiety of the said reversion, with the appurtenances, by the description in the said indenture specified, which said fine it was thereby declared should be and enure to and for the proper use and behoof of the said M. S. his heirs and assigns for ever, in trust to and for the only proper use and behoof of the said P. J. his heirs and assigns: And the said plaintiff further saith, that afterwards, in Michaelmas term, in, &c. in the court of our lord the now king, before the then justices of the bench at Westminster, in the county of Middlesex, a certain fine *sur connusance de droit* was levied in due form of law, in pursuance of the said indenture made by the said P. J. and M. his, &c. to the said M. S. of the said undivided moiety of the said reversion, with the appurtenances, to wit, at, &c.; by means whereof the said P. J. afterwards, to wit, on, &c. became and was seised in his demesne as of fee, of and in the said undivided moiety of the reversion, with the appurtenances, and being so thereof seised, and the said R. R. and J. Q. being so seised of the said other undivided moiety of the said reversion, with the appurtenances as aforesaid, with power to sell the same as aforesaid; and the said W. A. and P. A. being so possessed of the said demised premises, with the appurtenances, for the term to him thereof demised as aforesaid, the said P. J. afterwards, to wit, on, &c. died so seised of and in the said undivided moiety of the said reversion, with the appurtenances, upon whose death the same descended and came unto J. P. J. his only son and heir at law,

law, an infant under the age of twenty-one years, to wit, of the age of sixteen years, to wit, at, &c.; and the said J. P. J. R. R. and J. Q. being so respectively seised, and the said W. A. and P. A. being so possessed of the said demised premises as aforesaid for the said demised term, the said P. A. afterwards, to wit, on, &c. died so possessed, and the said W. A. then and there survived him, and the said W. A. then and there survived him and became solely possessed of the said demised premises, with the appurtenances, for the then residue and remainder of the said term demised, to wit, at, &c. and being so solely possessed for the term aforesaid, and demised aforesaid, and the said J. P. J. being so seised of one undivided moiety of the said reversion, with the appurtenances, and the said R. R. and J. Q. being so seised of the said other undivided moiety of the said reversion, with the appurtenances aforesaid, with power to sell the same as aforesaid afterwards, and whilst the said W. A. was possessed of the said demised premises, with the appurtenances, for the time aforesaid so demised as aforesaid, to wit, at a parliament of our sovereign lord the now king, holden at Westminster, in the county of Middlesex, by prorogation in, &c. and in the sixth year of his reign, intituled, "An Act, &c. (set forth the title of the act *verbatim*), reciting (among other things), that the said W. W. R. and P. J. in and by an agreement in writing, bearing date, &c. contracted with the said plaintiff for sale of the said farm and premises, at, &c. in, &c. (being the premises aforesaid, with the appurtenances) at and for the price or sum of one thousand pounds, to be paid on or before Christmas then next, and the purchaser to hold the premises from Michaelmas day next ensuing the date of the aforesaid written agreement: And whereas also reciting that the said P. J. departed this life on, &c. before the said agreement with the said plaintiff was carried into execution; and also reciting the descent of an undivided moiety of the reversion, with the appurtenances, to the said J. P. J. as the only son and heir of the said P. J. subject to the said contract for sale with the said plaintiff being carried into execution; and also reciting, that the said J. P. J. on his attaining the age of twenty-one years, would have a power and absolute right to sell and dispose of the inheritance in fee-simple of the said undivided moiety of the said reversion in the premises aforesaid, with the appurtenances: It was by the said act enacted, that the aforesaid undivided moiety or half-part of and in the said demised premises (amongst other things), with the appurtenances, to wit, the said undivided moiety of the reversion aforesaid, with the appurtenances, with their and every of their rights, members, and appurtenances, and the reversion and reversions, and remainder and remainders, yearly and other rents, issues, and profits thereof, and every part and parcel thereof, and all the legal and equitable estate, right, and title, vested or contingent interest, property, possession, claim and demand whatsoever of them the said M. S. and J. P. J. or of any person or persons for them or any of them, of, into, and out of the same here-

leaving issue J. P. J. his heir at law, an infant, &c.

P. A. one of the lessees, dies, the other lessee surviving, he solely possessed, &c., &c. &c.

An act of parliament to appoint trustees to sell for the use of J. P. J.

Reciting an agreement between W. W. R. and P. J. to sell the same to plaintiff.

P. J. died before the agreement was carried into execution. Descent to J. P. J. subject to such contract, &c.

That J. P. J. when of age, would have power to sell. Enacted that such moiety,

should be vested
in F. F. and J. F.
to their use, in
trust, that they
should, upon
payment, &c.
sell to plaintiff,
&c.

hereditaments and premises, or any of them, or any part or parcel thereof, should from and after, &c. be settled upon and vested in the same, were thereby from thenceforth settled upon and vested in F. F. of, &c. and J. F. of, &c. their heirs and assigns, to the use and behoof of them the said F. F. and J. F. their heirs and assigns for ever upon trust, that they the said F. F. and J. F. and the survivor of them, and the heirs of such survivor, should and would, upon payment of a moiety or half-part of the said sum of one thousand pounds by the said plaintiff, his heirs, executors, or administrators, or in case he or they should decline and not proceed in the said purchase, then upon payment of a moiety of the sum of one thousand pounds, or any greater sum or sums of money by any other person or persons, who with the approbation of the said M. J. during her life, should agree to purchase the hereditaments and premises so agreed to be purchased by the said plaintiff as aforesaid unto the said F. F. or J. F. or survivor of them, or the heirs, executors, or administrators of such survivor, for the purposes thereafter mentioned, by good and sufficient conveyances and assurances in the law, convey and assure the aforesaid undivided moiety or half-part of and in all and every the aforesaid hereditaments and premises thereinbefore mentioned and described to be situate, lying and being in, &c. being the premises aforesaid, to wit, the aforesaid undivided moiety, &c. and contracted for and agreed to be purchased by the said plaintiff as aforesaid, with their and every of their rights, members, and appurtenances, and the fee-simple and inheritance thereof unto and to the use of the said plaintiff, his heirs and assigns, or unto or to the use of such other person or persons who should contract and agree for the purchase of the same premises, and his or their heirs and assigns respectively, as by the said act, relation being thereto had, will (amongst other things) more fully and at large appear: And the said plaintiff further saith, that after the making of the said act, to wit, on, &c. by a certain indenture of bargain and sale then and there made between the said R. R. J. Q. F. F. and J. F. (with their respective additions) of the one part, and the said plaintiff of the other part (one part of which said, &c.) the said R. R. J. Q. J. F. and J. F. for the considerations therein mentioned, bargained and sold the whole of the aforesaid reversion of and in the aforesaid premises, with the appurtenances (amongst other things) to the said plaintiff, to have and to hold the same unto the said plaintiff, his executors, administrators, and assigns, from the day next before the day of the date of the said indenture of bargain and sale, for and during, and unto the full end and term of one whole year from thence next ensuing, and fully to be complete and ended, as by the said indenture of bargain and sale, (relation being thereto had) may more fully appear; by virtue of which said indenture of bargain and sale, and by force of the statute, &c. the said plaintiff became and was possessed of the whole of the said reversion, with the appurtenances, for the said term to him thereof granted as aforesaid, the further reversion thereof, with

Plaintiff possessed for a year.

with the appurtenances, belonging to the said R. R. J. Q. F. F. and J. F. and their heirs and assigns, and being so possessed thereof, and the said further reversion thereof, with the appurtenances, belonging as aforesaid; and the said W. A. being so possessed of and in the said demised premises, with the appurtenances as aforesaid, afterwards, to wit, on, &c. by a certain indenture of release then and there made between R. R. and J. Q. of the first part, the said W. W. R. and B. his wife of the second part, F. F. and J. F. of the third part, and the said plaintiff of the fourth part (the one part of which, &c.) for and in consideration of the sum of five hundred pounds of lawful, &c. he the said R. R. and J. Q. with the consent of the said W. W. R. and B. his wife, testified as therein is expressed, and also in consideration of the sum of five hundred pounds of like lawful, &c. to the said J. F. and J. F. making together one thousand pounds in hand, well and truly paid by the said plaintiff at or before the enfealing and delivery of the said indenture of release, and for the considerations therein mentioned, they the said R. R. and J. Q. by the consent, approbation, and direction of the said W. W. R. and B. his wife, testified as therein is expressed, and also the said F. F. and J. F. released, and the said W. W. R. and B. his wife confirmed the said further reversion, with the appurtenances (amongst other things) to the said plaintiff, to have and to hold the same unto the said plaintiff, his heirs and assigns to the only proper use and behoof of the said plaintiff, his heirs and assigns forever, as by the said indenture of release, relation being thereto had may (amongst other things) more fully appear; by means whereof, and by the force of the statute, &c. the said plaintiff became and was, and still is seised in his demesne as of fee of and in the said reversion, with the appurtenances, to wit, at, &c.; and being so seised, and the said W. A. being so possessed of and in the said demised premises, with the appurtenances, as aforesaid, for the term aforesaid, afterwards, to wit, on, &c. all the estate, right, title, term of years then to come and unexpired, property, interest, claim, and demand whatsoever of him the said W. A. of, in, and to the said demised premises, with the appurtenances, by assignment thereof, then and there legally made, came to, and vested in the said defendant; whereby the said defendant afterwards, to wit, on, &c. entered into the said demised premises, with the appurtenances, and was thereof possessed for the residue of the said term of twenty-one years then to come and unexpired, the reversion thereof, with the appurtenances, belonging to the said plaintiff and his heirs; and being so thereof possessed, and the said reversion, with the appurtenances, belonging to the said plaintiff as aforesaid, he the said defendant continued so possessed of the said demised premises, with the appurtenances, until the end, determination, and expiration of the said term of twenty-one years, which said term, by course of time, ended, determined, and expired on, &c. according to the stile and computation of time now used within this kingdom, being the feast of, &c. according to the old stile, &c. at the time of the making the

Release to plaintiff from trustees.

Plaintiff seised in fee.

Premises come to defendant by assignment.

Defendant possessed for the residue of the term.

Defendant continues in possession to the end of the term.

Performance by plaintiff.

Protestation that the defendant has not performed.

1st breach, non-payment of rent. If a good breach be not assigned, defendant may demur generally, Wi. Ent. 120.

2d breach, premises out of repair, messuage and buildings, &c.

Drains belonging to the same, hedges, &c.

the said indenture of lease, to wit, at, &c.; and although he the said plaintiff always, from the time of the making the said indenture of lease from the said R. R. J. Q. W. W. R. and B. his wife, F. F. and J. F. to the plaintiff, until the end and determination and expiration of the said term of twenty-one years, well and truly performed all and singular the covenants, matters, and things contained in the said indenture of lease so made by the said H. N. and S. his wife, unto the said W. A. and P. A. on the part and behalf of the said H. N. and S. his wife, and their assigns, to be performed and fulfilled according to the force and effect of the said indenture, and of the covenants of the said H. N. and S. his wife in that behalf, to wit, at, &c.; yet protesting that the said defendant, since the assignment made to him as aforesaid, has not performed or fulfilled any thing in the said indenture of lease made by the said H. N. and S. his wife unto the said W. A. and P. A. and their assigns, to be performed and fulfilled according to the force and effect of the said indenture, the said plaintiff in fact saith, that twenty-one pounds of the said yearly rent or sum of forty-two pounds (payable the last year of the said demised term) for the last half-year of the said demised term, ended on the first day of, &c. according to the old style, &c. &c. being the tenth of, &c. in that year, according to the new style, &c. &c. to wit, at, &c. became due and owing from the said defendant to the said plaintiff, and still are in arrear and unpaid, contrary to the form and effect of the said indenture of lease so made between the said H. N. and S. his wife, and the said W. A. and P. A. and of the covenants aforesaid of the said W. A. and P. A. in that behalf made as aforesaid, to wit, at, &c. And the said plaintiff further says, that after he became seized of the said term of the said premises, with the appurtenances, and after the said assignment to the said defendant, to wit, on, &c. the said capital messuage mentioned in and demised by the said last-mentioned indenture of lease, and the barns, stables, &c. thereto belonging, parcel of the said demised premises, were out of repair, ruinous, and in great decay in the walls, floors, beams, joists, and other timbers thereof, and in the roofs, tilings, slatings, thatchings, and coverings thereof, and in the ceilings, wainscotings, doors, door-cases, windows, window-frames, and pavements thereof, for want of needful and necessary repairing and amending thereof, and the drains, gutters, and watercourses thereof were stopped up, filled, and choaked up for want of needful and necessary cleansing and scouring thereof, and all and singular the hedges, &c. &c. of and belonging to the lands, parcel of the said premises, with the appurtenances, were ruinous, prostrate, broken down, rotten, and in great decay for want of needful and necessary

Breach for want of repairs in the condition of the covenant is sufficient, Lut. 329; but see 1. Bac. 543. and the way there mentioned agreeing with the prece-

dent, is certainly the best, for upon the defendant's general plea, the plaintiff would still be bound to descend to particulars, Cro. Jac. 170.

repairing and amending thereof, and all and singular the ditches drains, and watercourses in and belonging to the said land were filled and choaked up with filth, mire, dirt, and rubbish, for want of needful and necessary cleansing and scouring thereof, although the said plaintiff was always, after he became seised of the said premises, and during the continuance of the said lease, ready and willing to allow, to and for him the said defendant, sufficient rough timber for the purpose of repairing and amending the defects aforesaid, as far as the same could be found on the premises, to be taken by the assignment of the said plaintiff, according to the tenor of the said indenture of lease so made by the said H. N. and S. his wife to the said W. A. and P. A. and the said several premises so being out of repair, ruinous, and in decay, foul, choaked up, stopped up and obstructed for want of needful and necessary repairing, amending, cleansing and scouring thereof, he the said defendant suffered and permitted the same to be and continue out of repair, ruinous, and in great decay, foul, choaked up, and obstructed from thence until the end and expiration of the said demised term, and at the end and expiration thereof, left and yielded up the same premises to the said plaintiff so out of repair, &c. contrary to the tenor and effect of the said indenture of lease, and of the aforesaid covenant of the said W. A. and P. A. made in that behalf as aforesaid, to wit, at, &c. : And the said plaintiff further saith, that the said defendant, after the said plaintiff so became seised, and after the said assignment to the said defendant, and during the continuance of the aforesaid term in one year, to wit, on, &c. ploughed up, broke up, and converted into tillage, and in that year, to wit, in, &c. had and used in tillage above and more than one-half of the lands demised by the said indenture made between, &c. as aforesaid, to wit, fifteen acres over and above the one-half of the said lands; by means whereof, and according to the tenor of the said last-mentioned indenture, and of the said covenant of the said W. A. and P. A. by them in that behalf made as aforesaid, a further rent, to wit, a rent or sum of seventy-five pounds, being at and after the rate of five pounds an acre for every acre of the said fifteen acres of land so ploughed, &c. payable from the said defendant to the said plaintiff, and that the said last-mentioned rent so becoming payable as aforesaid, seventy-five pounds for the said fifteen acres of land so ploughed, &c. did on, &c. (according to old stile aforesaid), in, &c. being the tenth, &c. in the year (according to new stile aforesaid), at and on that feast-day, &c. become due and payable from the said defendant to the said plaintiff, and the same is still in arrear and unpaid, &c. (as before) : And the said plaintiff further saith, that the said defendant, after the said plaintiff so became seised as aforesaid, &c. (as before), to wit, on, &c. dug up, ploughed up, broke up, and converted into tillage, divers, to wit, fifteen acres of the said marshes and marsh ground, exclusive of all over and above the said eight acres mentioned in the said indorsement so made on the said last-mentioned indenture of lease; by means whereof, and according

Plaintiff ready to allow rough timber as far as the same could be found on the premises, to be taken by assignment;

permitted the same to continue out of repair;

yielding up the same out of repair, &c.

3d breach, for ploughing above half of the land, whereby an additional rent of five pounds an acre accrued.

4th breach, for ploughing more than eight acres of marsh ground mentioned in the indorsement, whereby, &c.

according, &c. (as in the third breach): (a) And so the said plaintiff saith, that the said defendant (although often requested, &c.) hath not kept the said covenant so made by the said W. A. and P. A. with the said H. N. and S. his wife as aforesaid, with him the said plaintiff, but hath broken the same, and to keep the same with him the said plaintiff hath hitherto wholly refused, and still refuses so to do, to wit, at, &c.; wherefore the said plaintiff saith he is injured, &c. &c. &c.

J. MORGAN.

(a) Not absolutely necessary, 4. Bac. 18.

Declaration on demise of an estate to defendant, upon consideration that defendant should lay upon the land a certain quantity of lime yearly, for which plaintiff was to allow two pounds *per annum*. Plaintiff paid the two pounds, but defendant never laid any lime on the ground.

CUMBERLAND, *J.* John Pitt v. Joseph Smith: for that whereas by certain articles of agreement made, concluded, and agreed upon the tenth day of October, A. D. 1775, to wit, at, &c. in, &c. between said plaintiff of the one part, and said defendant of the other part (one part of which articles, sealed the seal of said defendant, and bearing date the day and year, &c. he said plaintiff now brings into court here) he said plaintiff did set and to farm-let all his estate at, &c. together with the common rights and sheep thereunto belonging (only excepting and reserving for his own use the parcel of houses adjoining Waterwood which he said defendant then dwelt in, together with the garth and copy) to said defendant for the term of one year, and so on for nine years, capable of determination as in said articles is mentioned, at and under the yearly rent, and subject to such allowances and deductions as is and are in the said articles in that respect specified, and said defendant to enter upon the estate the fifteenth day, &c.; and it was by said articles further agreed, by and between said parties thereto, that said defendant should lay on eighty bushels of lime yearly upon said estate (that is to say, the said estate so demised to him as aforesaid), only he should be at liberty to lay on the last years eighty bushels in any of the years of said term of nine years; and that *said plaintiff should pay two pounds sterling yearly to said defendant towards said lime*, as by the said indenture of agreement, reference being thereunto had, will amongst other things more fully and at large appear; by virtue of which said articles of agreement he said defendant, after the making thereof, to wit, on, &c. entered into said estate so demised to him as aforesaid, with the appurtenances, and became and was, and from thence hitherto hath been, and still is possessed thereof, and of the said sheep belonging thereunto, under and by virtue of said articles and the aforesaid demise, to wit, at, &c.; and although he said plaintiff, from the time of making of said articles of agreement, hitherto hath well and truly performed all things contained in said articles on his part and behalf to be performed and fulfilled, according to the true intent and meaning of said articles, to wit, at, &c.; yet protesting that said defendant hath not performed or fulfilled any thing in said articles contained on his part and behalf to be performed and fulfilled: In fact said plaintiff saith, that
although

although seven years and more of said term in said articles of agreement mentioned, and thereby demised as aforesaid, have long since elapsed; *and although he said plaintiff hath, during all such time, paid to said defendant the sum of two pounds sterling yearly towards said lime so by said defendant agreed to be laid on said estate so to him demised as aforesaid, according to the tenor and effect, true intent and meaning of said articles of agreement;* yet said defendant did not yearly, or in any other manner during said seven years, or any part thereof, lay in or upon said estate so to him demised as aforesaid, eighty bushels of lime, according to the tenor and effect of said articles of agreement, or any other quantity of lime whatsoever, but on the contrary wholly neglected and omitted so to do, and therein wholly failed and made default, and the said lime is still wholly unladen upon said estate, contrary to the tenor and effect of, &c. and the covenant of him said defendant in that behalf made as aforesaid, to wit, at, &c. whereby said estate of said plaintiff so demised to said defendant as aforesaid, and the soil thereof hath been and is considerably impoverished and diminished in its worth and value, to wit, at, &c. &c. (A 2d Count like the first, omitting what is in *Italic.*) Damages fifty pounds.

V. LAWES.

MIDDLESEX, ss. Robert Oliver, late of, &c. was summoned to answer unto David Cock, esquire, in a plea that the said Robert keep with him the said D. C. the covenant made between the said D. C. and the said R. O. according to the force, form, and effect of a certain indenture so thereof made between the said D. C. and R. O.; for that whereas by a certain indenture made the twentieth day of, &c. to wit, at, &c. in, &c. between the said D. C. by the name of D. C. of the parish of, &c. esquire, of the one part, and the said R. O. by the name of R. O. of the parish of, &c. shoemaker, of the other part (the counterpart of which said indenture of lease, sealed with the seal of the said R. O. he the said D. C. now brings into court here, the date whereof is the same day and year aforesaid), the said D. C. for and in consideration of the yearly rent, &c. &c. &c. (here copy the lease), as by the said indenture (amongst other things), relation being thereto had may more fully and at large appear; by virtue of which said indenture of lease he the said R. O. afterwards, to wit, on, &c. entered into all and singular the said demised premises, with the appurtenances, and was and still is thereof possessed, and although the said D. C. always from the time of the making of the said indenture of lease, hitherto hath well and truly performed and fulfilled all things therein contained on his part, &c. according to the true intent and meaning of the said indenture; yet protesting that the said R. O. hath not performed or fulfilled any thing in the said indenture contained on his part and behalf to be performed and fulfilled, he the said D. C. in fact saith, that after the making of the aforesaid indenture of lease, and during the continuance of the term so demised as aforesaid, to wit, from the

Declaration,
lessor against
lessee, non-pay-
ment of paro-
chial taxes of
premises, con-
tiguous to those
demised to de-
fendant, &c. &c.

COVENANT.—LESSOR AGAINST LESSEE.

the feast of the Birth of Our Lord Christ, in the year 1769, until the feast of, &c. in the year 1772, the back houses, buildings, ground, and premises, with the appurtenances, in the said indenture mentioned, and at the time of the making of the lease aforesaid, and from thence hitherto standing and being behind the messuage or tenement and premises by the said indenture demised, or agreed to be demised, unto the said R. O. belonging to the said D. C. and for which the said R. O. according to the tenor of his covenant aforesaid, ought to have paid the parochial taxes, charges, assessments, and impositions taxed, charged, assessed, and imposed thereon, during the continuance of the term aforesaid, were duly and legally taxed, charged, assessed and imposed with a certain parochial rate or assessment, to wit, to the rate for the relief of the poor of the parish of, &c. in, &c. (in which said parish the same premises during all the time aforesaid were situate), commonly called the poor rate, to wit, at the rate or sum of fifteen shillings by the quarter of a year, for three pounds by the year, and that on the feast-day of the Birth of, &c. a large sum of money, to wit, the sum of nine pounds of and for the rate aforesaid, for three years then last past, and ending at the feast-day last-mentioned, at that feast in the year last aforesaid, became due and owing for the said rate or assessment so made on the said back houses, and building, ground, and premises in that behalf before mentioned, and which were assessed in form aforesaid, which said sum of nine pounds ought to have been paid by the said R. O. according to the tenor of the aforesaid indenture, and of his aforesaid covenant in that behalf made as aforesaid, whereof the said R. O. afterwards, to wit, on, &c. had notice, and was then and there requested by the said D. C. to pay the same, to do which he the said R. O. then and there and from thence hitherto wholly neglected and refused, and the said R. O. still refuses to pay the same or any part thereof, contrary to the form and effect of the aforesaid indenture of lease, and of the covenant aforesaid of him the said R. O. in that behalf made as aforesaid; whereupon he the said D. C. afterwards, to wit, on, &c. was forced and obliged to pay the said sum of nine pounds; and so the said D. C. saith, that the said R. O. (although often requested), by the said D. C. hath not kept his said covenant so by him made with the said D. C. as aforesaid, but hath broken the same, and to keep the same with the said D. C. he the said R. O. hath hitherto wholly refused, and still refuses so to do, to wit, at, &c.; wherefore the said D. C. saith he is injured, and hath sustained damage to the value of thirty pounds; and thereupon he brings his suit, &c. &c.

J. MORGAN.

LONDON,

LONDON, *sc.* J. V. assignee of V. L. complains of T. M. being, &c. for that whereas the said V. L. before and at the time of the making of the indenture of lease hereafter mentioned, was seised in his demesne as of fee of and in the several premises thereby demised to the said T. M. and being so seised by a certain indenture made the seventeenth day of, &c. to wit, at, &c. between the said V. L. of the one part, and the said T. M. of the other part (one part of which said indenture, sealed with the seal of the said T. M. and bearing date the day and year aforesaid, he the said V. L. now brings into court here), the said V. L. for the considerations therein mentioned, did demise, lease, set, and to farm let unto the said T. M. all that brick messuage, tenement, or dwelling house, with the outhouses, &c. thereunto belonging, situate, lying, and being on the south side of Budge-row, in the parish, &c. abutting east, &c. on the west, &c. and south, &c. which said messuage or tenement thereby demised was, or then late was thereby demised, was, or late was commonly called or known by the name or sign of the Salutation Tavern, and was formerly in the possession of William Fall, but then or late of J. P. together with all and singular erections, buildings, &c. whatsoever to said messuage or tenement, yard, and premises before-mentioned, or any part thereof belonging, or therewith usually held, used, occupied, or enjoyed (the ground and soil of which thereby before demised messuage, or tenement, yard, and premises, did contain the measures and form mentioned in the plan delineated under the said indenture), and also all that brick dwelling-house, or tenement, formerly in the possession of the said W. F. but then or late of the said J. P. his undertenants, or assigns, situate and being in Tower court, in the parish, &c. and adjoining south to the messuage or tenement therein before demised, and containing the several rooms following, that is to say, one cellar with a door, &c. into the same from the said court, one warehouse, or room, with shutters to the window, and a passage leading from the same into the said tavern, with a door into the said court, and a lock and key to the same, one large vault, a house of easement, with a door, &c. to have and to hold the said messuage or tenements, vaults, &c. thereby demised or mentioned, or intended so to be, with their and every of their appurtenances, unto the said T. M. his executors, administrators, and assigns, from the feast-day of the Birth of Our Lord Christ next ensuing the date of the said indenture, for and during and unto the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended; yielding and paying therefore yearly and every year during the said term, unto the said V. L. his heirs, or assigns, the rent or sum of nine pounds of lawful, &c. by two half yearly payments, on the feast-days, &c. the first of such half yearly payments to be made on, &c.; and the said T. M. did thereby for himself, his executors, administrators, and assigns, covenant, promise, and agree to, and with the said V. L. his heirs, and assigns, in manner following, that is to say (amongst

Declaration in covenant by the assignee of a reversion against defendant for leaving premises demised to him out of repair, taking away the locks, &c. *per quod*, plaintiff was put to great expence in repairing, &c.

other things), that he the said T. M. his executors, administrators, and assigns, should and would at his and their own proper costs and charges, within the space of two years from the day of the date of the said indenture, put, or cause and procure all and singular the said thereby demised messuages or tenements and premises to be put into good and substantial repair, and should and would from time to time, and at all times hereafter during the continuance of that demise, when, where, and as often as need or occasion should be or require, sufficiently repair, uphold, support, &c. and keep the said messuages or tenements, &c. and other the premises thereby demised, and every part thereof, and all other erections and buildings which during the said term thereby granted should or might be erected, built, or set up in or upon the said thereby demised premises, or any part thereof, in by and with all and all manner of needful and necessary reparations and amendments whatsoever, when and as often as need or occasion should be or require, and the said several messuages and tenements, erections, &c. being so well and sufficiently supported, sustained, &c. and kept as aforesaid, at the expiration or other sooner determination of that demise which should first happen, should and would peaceably and quietly leave, surrender, and yield up unto the said V. L. his heirs, or assigns, together with all the wainscots and other things fixed or to be fixed to the freehold of the said several messuages, yards, and premises thereby demised, or any part thereof, together also with all such other things as should be mentioned and expressed in the schedule or inventory thereof, intended to be indorsed upon the said indenture, when and as soon as the said premises should be repaired as aforesaid, as by the said indenture, relation being thereunto had (amongst other things more fully and at large appears), by virtue of which said demise, he the said T. M. afterwards, on, &c. entered into all and singular the said demised premises, with the appurtenances, and was possessed thereof for the said term to him thereof demised as aforesaid, the reversion thereof, with the appurtenances, belonging unto the said V. L. and the same reversion being so belonging as aforesaid, afterwards, on, &c. by a certain indenture of bargain and sale then and there made between the said V. L. of the one part, and the said J. V. of the other part (one part of which said last-mentioned indenture, sealed with the seal of the said V. L. now brings into court here, the date whereof is the same day and year last aforesaid), the said V. L. for the considerations therein mentioned, bargained and sold unto the said J. V. the said reversion, with the appurtenances, of and in a certain part of the said demised premises (amongst other things), that is to say, of and in the said messuage or tenement, situate and being in Tower-court aforesaid, in, &c. to have and to hold the same, with the appurtenances, unto the said J. V. his executors, administrators, and assigns, from the day next before the day of the date of the said indenture of bargain and sale, for and during and unto the full end and term of one whole year from thence next ensuing, and fully to be complete and ended, as by the

the said indenture of bargain and sale, relation being thereto had may more fully appear, by virtue of which said indenture of bargain and sale, and by force of the statute made for transferring uses into possession, the said J. V. became and was possessed of the said reversion of and in the said last-mentioned messuage or tenement, with the appurtenances, for the said term so to him thereof granted as aforesaid, the further reversion thereof, with the appurtenances belonging, to the said V. L. his heirs, and assigns, and being so thereof possessed, and the said further reversion thereof, with the appurtenances belonging as aforesaid, afterwards, to wit, on, &c. at, &c. by a certain indenture of release then and there made between the said V. L. of the one part, and the said J. V. of the other part (the one part of which said last-mentioned indenture, sealed with the seal of the said V. L. he the said J. V. now brings into court here, the date whereof is the same day and year last aforesaid), the said V. L. for the considerations therein mentioned, released the said further reversion, with the appurtenances, of and in the said last-mentioned messuage or tenement, with the appurtenances (amongst other premises), to the said J. V. to have and to hold the same to the said J. V. his heirs, and assigns, to the use and behoof of him the said J. V. his heirs, and assigns, for ever, as by the said indenture of release (relation being thereunto had) may more fully appear, by means whereof the said J. V. became and was, and from thence hitherto hath been and still is seised in his demesne as of fee of and in the said reversion of and in the said last-mentioned messuage and premises, with the appurtenances, to wit, at, &c. last aforesaid: And although the said J. V. always from the time of the making of the said indenture of release, until the end and expiration of the aforesaid demised term of twenty-one years, well and truly performed and fulfilled all things contained in the said indenture of lease between the said V. L. and the said T. M. on the part and behalf of the said V. L. and his assigns to be done and performed according to the force and effect of the said indenture; yet protesting that the said T. M. did not, after the making of the said indenture of release, perform or fulfil any thing in the said indenture of lease between the said V. L. and the said T. M. contained on the part and behalf of the said T. M. and his assigns to be done and performed according to the force and effect of the said indenture, he the said J. V. in fact saith, that after he so became seised of the said reversion of and in the said last-mentioned messuage or tenement, with the appurtenances (part and parcel of the aforesaid demised premises), and during the continuance of the said term of twenty-one years, to wit, on, &c. the said last-mentioned messuage, together with the said outhouses, &c. thereto belonging, was and were out of repair, ruinous, and in great decay in the walls, &c. and the said several premises so being out of repair, ruinous, and in decay, foul, and choaked up, stopped up, and obstructed for want of needful and necessary repair, &c. thereof, and in various other parts and particulars thereof, for

want of needful and necessary repairs and amendments thereof, and the drains, gutters, and water-courses thereof, and thereto belonging, were stopped up, and obstructed, filled up, and choaked for want of needful and necessary cleansing and scouring thereof, and the said several premises so being out of repair, ruinous, and in decay, foul, and choaked up, &c. for want of needful and necessary repairing and amending, &c. thereof, he the said T. M. suffered and permitted the same to be and continue so out of repair, ruinous, and in decay, foul, and choaked up, stopped up, and obstructed from thence until the end and expiration of the said demised term, and at the end and expiration thereof, to wit, on, &c. left and yielded up the said last-mentioned premises to the said J. V. so out of repair, ruinous, and in decay, foul, and choaked up, &c. contrary to the tenor and effect of the said indenture of lease to the said J. M. and of the said covenant of him the said J. M. in that behalf made as aforesaid: And the said J. V. in fact further saith, that the said T. M. did not, at the expiration of the aforesaid demise, peaceably and quietly leave, surrender, and yield up the possession of the said last-mentioned premises unto him the said J. V. as aforesaid, with the wainscots, and other things fixed to the freehold thereof, and such other things as were mentioned and expressed in the said schedule or inventory so intended to be made as aforesaid, and which was accordingly made and indorsed on the said indenture of lease to the said T. M.; but on the contrary, the said J. V. says, at the time of the said T. M. so surrendering and yielding up the possession of the said last-mentioned premises as aforesaid, certain of the wainscots, &c. and other things of and belonging to the said premises, and fixed to the freehold thereof, and also certain other things mentioned and contained in such schedule or inventory as aforesaid, and of and belonging to the said last-mentioned premises, to wit, &c. of and belonging to the said last-mentioned dwelling house, two locks, &c. of a large value, to wit, of the value of fifty pounds, had been and were removed and taken away from and off the said premises, and were wanting and deficient, and the said T. M. at the end of the said term left and yielded up the said last-mentioned premises so as aforesaid, to the said J. V. as aforesaid, without such things as had been and were so removed and taken away as aforesaid, contrary to the tenor and effect of the aforesaid indenture of lease to the said T. M. and his covenant in that behalf made as aforesaid, whereby, and by reason of which said several premises, he the said J. V. hath been forced and obliged to lay out and expend a large sum of money, to wit, &c. in and about the repair and reinstating said last-mentioned premises and things, and to render the same premises tenantable, to wit, at, &c.; and so the said J. V. says, that the said T. M. although often requested, hath not kept the said covenant so by him made with the said V. L. and his assigns as aforesaid, but hath broken the same, and to keep the same with him the said J. V. hath wholly refused, &c. to the said J. V.'s damage of two hundred pounds; and therefore he, &c.

V. LAWES.

And now at this day, that is to say, on Monday next, after the Morrow of All Souls, until which day the said T. had leave to imparl to the said bill, and then to answer the same, &c. at which day, before our said lord the king, at Westminster, comes as well the said J. by his said attorney, as the said T. by C. Hobsom, his attorney, and the said T. defends the wrong and injury, when, &c. and as to the supposed breach of covenant in the said declaration first above assigned, says, that the said J. ought not to have or maintain his said action thereof against him the said T. because he says, that after the said J. became seised of the said reversion of and in the said last-mentioned messuage or tenement, with the appurtenances, part and parcel of the aforesaid demised premises, and during the continuance of the said term of twenty-one years, the said last-mentioned messuage, together with the outhouses, &c. thereto belonging, were not out of repair, &c. in the several particulars in the said supposed first breach of covenant mentioned, or in any of them, nor were the same at the end and expiration of the said term of twenty-one years left and yielded up to the said J. V. so out of repair, &c. contrary to the covenant of the said T. in that behalf made, in manner and form as the said J. in his said supposed breach of covenant first above assigned hath alleged, and of this the said T. puts himself upon the country, and the said J. does the like, &c. : And as to the said supposed breach of covenant in the said declaration lastly above assigned, the said T. says, that the said J. ought not to have or maintain his said action thereof against him the said T. because he says, that at the expiration of the aforesaid demise, the said messuage and premises so assigned to him the said J. as aforesaid, together with the wainscots and other things fixed to the freehold thereof, and such other things belonging to the said last-mentioned messuage and premises, as are mentioned and expressed in the said schedule or inventory so as aforesaid made and indorsed on the said indenture of lease, were peaceably and quietly left, surrendered, and yielded up to the said J. as such assignee as aforesaid, according to the covenant of the said T. in the said indenture of lease in that behalf contained, to wit, at, &c. : And of this the said T. also puts himself upon the country, and the said J. doth the like; therefore as well, &c.

Plea, that at the end of the demise, the premises were not yielded up out of repair. 2d Plea, that at the end of the demise, defendant delivered up the premises, with everything that was fixed to the freehold.

YORKSHIRE, ff. John S. complains of J. H. and W. H. being, &c. in a plea of breach of covenant: for that whereas by a certain indenture made, &c. at S. in the said county of Y. between the said John of the one part, and the said Joseph and W. of the other part (one part of which said indenture, sealed with the respective seals of the said Joseph and W. the said John now brings into court here, the date whereof is the day and year premises to one N. R. during whose occupation great waste was committed by a main beam being taken away from the barn, and a cow-house converted into a blacksmith's shop; 3dly, for not repairing,

Declaration by lessor against lessees, 1st, for cutting trees, and stubbing up underwood in the garden hedge; 2d, for under-letting the

aforesaid), he the said John did grant, demise, and to farm-let unto the said Joseph and William, all that his the said John's messuage and tenement of Holme Park, with the appurtenances thereunto belonging (except the old house and the pinfold which the said John reserved for his own use), situate, lying and being in &c. together with all and singular houses, &c. whatsoever to the said messuage and tenement belonging, or in any wise appertaining (except as before excepted), to have and to hold the said messuage and tenement with the appurtenances (except as before) unto the said Joseph and William, from, &c. then next ensuing the date hereof, for and during unto the full end and term of nine years from thence next ensuing, and fully to be complete and ended, at and under the yearly rent or sum of fifty pounds of lawful money of Great Britain, payable as in the said indenture is mentioned: And the said Joseph and William, for themselves and each of them, did by the said indenture covenant, promise and agree to and with the said John, his heirs and assigns (amongst other things), in manner and form following, that is to say, that they the said Joseph and W. should not nor would cut or fell any of the trees, or otherwise stub or grub up any of the wood or underwood growing on the said premises, and also should not nor would let or demise any part of the said premises to any person or persons, but should and would live thereon themselves during the said term thereby demised, and also that they the said Joseph and William should and would keep in good, sufficient, and tenantable repair during the said term, all and singular the houses, outhouses, &c. and sufficiently glaze all and every the glass windows belonging to the said premises, with such glass as the same were then glazed with, and scour and cleanse all the ditches and watercourses on the said premises, and should and would leave the same well and sufficiently repaired, glazed, scoured, and cleansed at their own proper costs and charges at the end of the said term, as by the said indenture, reference being thereto had, will (amongst other things) more fully and at large appear; by virtue of which said demise the said Joseph and William afterwards, to wit, on, &c. entered into the said demised premises with the appurtenances, and was possessed thereof for the term to them thereof granted; and although the said John always, since the making of the said indenture, hitherto hath well and truly performed and fulfilled all things in the said indenture contained on his part and behalf to be performed and fulfilled, according to the form and effect of the said indenture; yet protesting that the said Joseph and William have not performed or fulfilled any thing in the said indenture contained on their part and behalf to be done, performed, fulfilled, and kept: In fact the said John says, that after the commencement of the said term, and during the continuance of the same, and before the exhibiting the bill of the said John against the said Joseph and William, to wit, on, &c. they the said Joseph and William wrongfully cut, felled, and caused and procured to be wrongfully cut and felled divers, to wit, forty trees

1st, Stubbing up
garden hedge.

trees, then growing, standing, and being in and upon the said demised premises, and also then and there wrongfully stubbed and grubbed up, burnt, consumed, damaged and spoiled, and caused and procured to be wrongfully stubbed and grubbed up, burnt, consumed, damaged and spoiled, a large quantity of the underwood growing and being upon the said demised premises, that is to say, a certain hedge or fence of and belonging to a certain garden belonging to the said messuage in the said indenture mentioned, contrary to the tenor and effect, intent and meaning of the said indenture, and of the covenant of the said Joseph and William in that behalf made as aforesaid, and in breach and violation thereof, to wit, at, &c.: And the said John in fact further saith, that ^{2d, underlet-} the said Joseph and William did not live upon the said premises to ^{ting, &c.} them demised aforesaid themselves, during the said term so to them thereof demised as aforesaid, but on the contrary the said John saith, that after the commencement of the said term, and during the continuance thereof, and before the exhibiting the bill of the said John, to wit, on, &c. at, &c. let and demised the said premises so to them demised as aforesaid, with the appurtenances, unto one N. R. who under and by virtue of such demise to him entered into and became, and was possessed of the said premises with the appurtenances, contrary to the form and effect of the aforesaid indenture, and of the covenant of the said Joseph and William in that behalf made as aforesaid, and whereby, and in consequence thereof great waste and spoil, dilapidation and destruction took place and ensued upon the said premises by and during the occupation of the said N. R. that is to say, in the several and respective instances following, to wit, in this, that during such occupation of the said premises by the said N. R. a certain main beam or balk of and belonging to a certain barn or building in and upon the said demised premises, and part and parcel thereof, was wrongfully pulled and taken down and removed from thence, so that thereby the said barn was and is greatly weakened, maged, and injured, and also in this, to wit, that during the said occupation of the said demised premises by the said N. R. a certain cow-house in and upon the said demised premises, and part and parcel thereof, was wrongfully converted and turned into, and still remains and continues a building appropriated and applicable to other and different purposes, to wit, a blacksmith's shop, and the trade and business of a blacksmith, was, and ever since hath been, and still is, exercised and carried on therein, to the great damage and injury of the same, and the estate and interest of the said John therein, to wit, at, &c.: And the said John further says, that the ^{3d, Not repair-} said Joseph and William have not, since the commencement of ^{ing.} the said term so to them demised as aforesaid, kept in good, sufficient, and tenantable repair, all and singular the houses, &c. nor have they sufficiently glazed all and every the glass-windows to the said premises so to them demised as aforesaid, and scoured and cleansed all the ditches and water-courses on the said premises, but on the contrary thereof the said John saith, that during the said

2d Count, omitting the covenant not to let or assign the premises) stating an assignment to N. R. and that he cut the trees, stubbed up the underwood, and neglected to repair.

term, to wit, on, &c. the said demised messuage, barns, and other the premises aforesaid, were, and from thence hitherto have been, and still are ruinous, out of repair, and in decay in the walls, beams, &c. thereof, and in other parts and particulars thereof, and in all and every the gates, locks, &c. thereof, for want of good, sufficient, and tenantable repair, and needful and necessary repairing, upholding, and amending thereof; and in particular the said John saith, that a certain main-beam timber or balk of and belonging to a certain other barn or building, part and parcel of the aforesaid demised premises, had been and was, upon the day and year last aforesaid, and still is wrongfully taken down and removed from thence, and a certain other cow-house, or part and parcel of the said demised premises had been and was converted and turned into a building for other and different purposes, to wit, into a blacksmith's shop, to the great damage and injury of the said several last-mentioned buildings, and the estate and interest of the said John therein, contrary to the form and effect of the said indenture, and of the said covenants of the said Joseph and William in that behalf made as aforesaid, to wit, at, &c. And whereas by a certain other indenture made, &c. at, &c. between the said John of the one part, &c. (as in 1st Count, till you come to the covenants, except in this, that the demise is stated to be to the defendants, and "*their executors, administrators, and assigns,*" and the covenants are, that defendants, for themselves, their and each of their executors, administrators and assigns, did, and each of them did, by the said last-mentioned indenture, promise that they said defendants, their executors, administrators and assigns, should not, &c. and agree, &c. as in 1st Count, omitting the covenant not to let or demise the premises, then proceed as follows): as by the said last-mentioned indenture, reference being thereunto had, will (amongst other things) more fully and at large appear; by virtue of which said last-mentioned demise the said Joseph and William afterwards, to wit, on, &c. entered into the said last-mentioned demised premises, with the appurtenances, and was possessed thereof for the said term so to them thereof granted as aforesaid, and so remained and continued from thence for a long time, to wit, until afterwards, to wit, on, &c. when the said last-mentioned demised premises came to and were vested in the aforesaid N. R. by assignment thereof from the said Joseph and William unto him the said N. R. who then, and from thence hitherto was and hath been, and still is in the possession of the said premises, as such assignee of the said Joseph and William, to wit, at, &c. in, &c.: And the said John further says, that although he the said John always, since the making of the said last-mentioned indenture, hitherto hath well and truly performed, &c. (as in 1st Count, then proceed with the breaches as follows): In fact the said plaintiff says, that after the commencement of the said last-mentioned term, and during the continuance of the same, and also after the assignment of the said last-mentioned demised premises to the said N. R. and whilst the

the same were so in the possession of the said N. R. as aforesaid, to wit, on, &c. he the said N. R. wrongfully cut and felled and caused and procured to be wrongfully cut, &c. divers, to wit, forty trees, then growing and being in and upon the said last-mentioned demised premises, and also then and there wrongfully stubbed, grubbed up, burnt, consumed, damaged and spoiled, and caused and procured to be wrongfully stubbed, &c. a large quantity of underwood growing and being in and upon the said last-demised premises, that is to say, a certain hedge or fence of and belonging to a certain garden belonging to the said messuage in the said last-mentioned indenture specified, contrary to the tenor and effect, intent and meaning of the said last-mentioned indenture, and of the covenant of the said Joseph and William in that behalf made as aforesaid, and in breach and violation thereof, to wit, at, &c.: And the said John in fact further saith, that the said N. R. hath not, since the assignment so to him made as aforesaid, nor have the said Joseph and William kept in good and sufficient repair all and singular the houses, &c. nor sufficiently glazed all and singular the glass-windows to the said premises so demised as last aforesaid, and scoured and cleansed all the ditches and watercourses on the said last-mentioned premises, but on the contrary thereof the said John saith, that during the said last-mentioned term, and whilst the said last-mentioned premises were so in the possession of the said N. R. as aforesaid, to wit, on the day and year last aforesaid, the said last-mentioned demised messuage, barn, &c. were, and from thence hitherto have been, and still are ruinous, out of repair, and in decay in the walls, &c. and in other parts and parcels thereof, and in all and every the gates, &c. thereof, for want of good, sufficient, and tenantable repair, and of needful and necessary repairing, upholding and amending thereof; and in particular the said John saith, that a certain main beam or balk, of and belonging to a certain other barn or building, part and parcel of the said last-mentioned demised premises had been and was, upon the day and year last aforesaid, and still is wrongfully taken down and removed from thence, and a certain cow-house, other part and parcel of the said last-mentioned demised premises, was and is wrongfully converted and turned into a building for other and different purposes, to wit, into a blacksmith's shop, to the great damage and injury of the said several buildings, and the estate and interest of the said John therein, contrary to the form and effect of the said indenture, and of the covenant of the said Joseph and William in that behalf made as aforesaid, to wit, at, &c.; and so the said John says, that the said Joseph and William (although often requested) have not kept their covenants so made with the said John, but have broken the same, and to keep the same with him the said John have hitherto wholly refused, and still refuses, to wit, at, &c. to the damage of the said John of one thousand pounds; and therefore he brings suit, &c. V. LAWES.

And

Pleas to the 1st Count: 1st, that defendants did not cut the trees nor stub up the underwood; 2dly, that they did not let the premises to N. R.; 3dly, that they did repair; 4thly, as to all the breaches in the last Count, that the premises never came to N. R. by assignment; 5thly, as to cutting the trees in that Count, that N. R. did not cut them; 6thly, as to the want of repairs; that N. R. did repair, and issues joined on each of the pleas.

And the said Joseph and William, by R. M. their attorney, come and defend the wrong and injury, &c. and as to the said supposed breach of covenant in the said first Count of the said declaration first above assigned, say, that the said John ought not to have or maintain his aforesaid action thereof against them; because they say that the said Joseph and William did not, nor did either of them cut or fell, or cause and procure to be cut and felled, any trees growing, standing, or being in or upon the said demised premises in the said first Count of the said declaration mentioned, in or upon any part thereof, or stub or grub up, burn or consume, damage or spoil any underwood growing or being upon the said demised premises, or upon any part thereof, in manner and form as the said John hath above thereof complained against them; and of this they put themselves upon the country, &c.; and the said John doth the like: And as to the said supposed breach of covenant in the said first Count of the said declaration secondly above assigned, the said Joseph and William say, that the said John ought not to have or maintain his aforesaid action against them; because they say, that they the said Joseph and William did not let or demise the same premises so to them demised as aforesaid, with the appurtenances, or any part thereof, unto the said N. R. in manner and form as the said John hath above thereof complained against them; and of this they put themselves upon the country, &c.; and the said John doth the like: And as to the said supposed breach of covenant in the said first Count of the said declaration thirdly above assigned, the said Joseph and William say, that the said John ought not to have or maintain his aforesaid action thereof against them; because they say, that they the said Joseph and William always, from the time of the making of the said indenture hitherto have kept all and singular the houses, &c. together with all the gates, stiles, &c. in good, sufficient, and tenantable repair, and have, during all that time, sufficiently glazed all and every the glass windows belonging to the said premises so to them demised as aforesaid, and scoured and cleansed all the ditches and water-courses on the said premises according to the form and effect of their said covenant in that behalf made as aforesaid; and of this they put themselves upon the country, &c.; and the said John doth the like: And as to the said several supposed breaches of covenant in the said last Count of the said declaration mentioned, the said Joseph and William say, that the said John ought not have or maintain his aforesaid action against them, because they say, that the said demised premises in the said last Count of the said declaration mentioned, did not come to or were vested in the aforesaid N. R. by assignment thereof from the said Joseph and William unto him the said N. R. in manner and form as the said John hath in the said last Count of his said declaration above alleged; of this the said Joseph and William put themselves upon the country, &c.; and the said John doth the like: And for a further plea in this behalf, as to the said supposed breach of covenant in the said last Count of the said declaration first above assigned, the said Joseph and William, by leave of the court here

for

for this purpose first had and obtained, according to the form of the statute in that case made and provided, say, that the said John ought not to have or maintain his aforesaid action against them; because they say, that the said N. R. did not cut or fell, or cause or procure to be cut or felled, any trees growing and being in or upon the same demised premises or any part thereof, or stub or grub up, burn, consume, damage, or spoil, or cause and procure to be stubbed or grubbed up, burnt, consumed, damaged, or spoiled, any underwood, growing or being upon the same demised premises, or upon any part thereof, in manner and form as the said John hath above thereof complained against the said Joseph and William; and of this they put themselves upon the country; and the said John doth the like: And for further plea in this behalf as to the said supposed breach of covenant in the said last Count of the said declaration lastly above assigned, the said Joseph and William, by leave, &c. say, that the said John *actio non*; because they say, that the said Joseph and William always, and from the time of the making the said indenture hitherto have kept all and singular the houses, outhouses, edifices, barns, stables, and buildings, together with all the gates, hedges, and fences, in good, sufficient, and tenantable repair; and have, during all that time, sufficiently glazed all and every the glass windows belonging to the said premises so demised, as in the said last Count of the said declaration is mentioned, and scoured and cleansed all the ditches and water-courses on the said last-mentioned premises, according to the form and effect of their said covenant in that behalf made as aforesaid; and of this they also put themselves upon the country, &c.; and the said John doth the like; therefore, &c. &c.

WILLIAM LAMBE.

Trinity Term, 33. Geo. 3.

EVES, GENT.

against

BURLTON AND ANOTHER.

} HEREFORDSHIRE, to wit.
Francis Eves, gent. complains of
John Burlton and Thomas Burl-

Declaration in
covenant, lessor
against lessee,
for non-pay-
ment of rent and
not repairing.

ton, being, &c. of a plea of breach of covenant; for that whereas by a certain indenture made the twelfth day of January, in the year of Our Lord 1791, at the parish of Eurdissland, in the said county of Hereford, between the said Francis of the one part, and the said John and Thomas of the other part (one part of which said indenture, sealed with the seal of the said John and Thomas, bearing date the day and year aforesaid, he the said Francis now brings here into court): It is witnessed that the said Francis, for the considerations therein mentioned, did lease, set, and to farm let unto the said John and Thomas, their executors, administrators, and assigns, all that messuage, tenement, or farm-house, with the water, corn, flour, and grist mill, &c. together with all gardens, &c. &c. to hold the same demised premises unto the said John and Thomas, their executors, administrators, and assigns, from the second day of February then next ensuing the date thereof, for and during, and unto the full end and term of twenty-one years,

years, determinable at the end of the first five, ten, or fifteen years of the said term of twenty-one, yielding and paying therefore yearly and every year during the said term unto the said Francis, his heirs and assigns, the yearly rent or sum of one hundred and twenty-six pounds of lawful money of Great Britain, in manner following, that is to say, the sum of twenty-four pounds on every second day of May, the sum of thirty-nine pounds on every second day of August, the sum of twenty-four pounds on every second day of November, and the sum of thirty-nine pounds on every second day of February, the first payment thereof to begin and be made on the second day of May then next ensuing the date thereof; and the said John and Thomas did thereby for themselves, and each of them for himself, and their and each of their executors, administrators, and assigns, and for every of them, covenant, promise, grant, and agree, to and with the said F. his heirs and assigns, in manner following, that is to say, that they the said John and Thomas, their heirs, executors, administrators, and assigns, or some or one of them, should and would well and truly pay, and cause to be paid unto the said F. his heirs or assigns, the said yearly rent of one hundred and twenty-six pounds, at the days and times, and in such manner as thereinbefore appointed for payment thereof, according to the reservation thereof afore-mentioned and the true intent and meaning of the said indenture; and that they the said J. and T. their executors, administrators, and assigns should and would, at his and their own proper costs and charges, well and sufficiently keep in repair the said messuage, tenement, or farm-house, mills, windows, cogs, rounds, and all other the outhouses, edifices, buildings, barns, stables, bridges, wears, flood-gates, water-courses, gates, rails, pales, stiles, hedges, ditches, and fences, of and belonging to the said thereby re-leased premises from time to time, and at all times during the said term, as in and by the said indenture (relation being thereunto had) will amongst other things more fully and at large appear; by virtue of which said demise they the said J. and T. afterwards, to wit, on the said second day of February, in the year afore-mentioned, at the parish afore-mentioned, in the county afore-mentioned, entered into all and singular the said demised premises, with the appurtenances, and became and were possessed of the said term therein to them thereof demised as afore-mentioned, the reversion thereof, with the appurtenances, belonging to the said F. his heirs and assigns; and the said J. and T. being so possessed of the said term as afore-mentioned, and the reversion of the said premises so belonging to the said F. his heirs and assigns as afore-mentioned, he the said F. saith, that although the said Francis, from the time of the making of the said demise hitherto hath well and truly performed and fulfilled all things in the said indenture contained on the part and behalf of the said F. to be performed and fulfilled, according to the true intent and meaning of the said indenture, to wit, at the parish afore-mentioned, in the county afore-mentioned; yet protesting that the said J. and T. have not, nor hath hitherto either of them performed or fulfilled any thing in the said

said indenture contained on their part and behalf to be performed and fulfilled; in fact the said F. saith, that a large sum of money, to wit, eighty-nine pounds of the rent aforesaid, for one year and an half of the said term, ending on the second day of May in the year of our lord 1793, on the day and year last aforesaid, became and was and still is in arrear and unpaid from the said J. and T. to the said F. yet the said J. and T. (although often requested) have not, nor hath either of them yet paid the said F. the said sum of eighty-nine pounds or any part thereof, but they to pay the same to him have and hath each of them hitherto wholly refused, and still refuse to pay the same to the said F. and the same and every part thereof still remains wholly in arrear and unsatisfied to the said F. contrary to the form and effect of the said indenture of demise so made to the said J. and T. and of their covenant so by them in that behalf made as aforesaid: And the said F. further in fact saith, that after the commencement of the said demise, and before the commencement of this suit, to wit, on the first day of June, in the year of Our Lord 1793, and for a long time, to wit, for the space of one year then elapsed, the said messuage and tenement, with all and every the barns, stables, outhouses, mills, and all and every the other part of the said demised premises, were prostrate, fallen down, choaked up, out of repair, and in decay for want of needful and necessary repairing and amending thereof in the coverings, roofs, tiling, slating, and thatching thereof, and in the timber, beams, rafters, and underpinnings thereof, and in the walls, wainscots, ceilings, floorings, and pavements thereof, and in the doors, door-frames, and window-frames thereof, and in the walls, hedges, ditches, drains, sewers, water-courses, gates, stiles, and fences thereof, and in the cogs and rounds of the said mill, and in every other part and particular part thereof; all which said premises, so being out of repair, they the said John and Thomas suffered and permitted to be and continue so out of repair, ruinous, and in great decay, for and during all the time aforesaid, and from thence until the commencement of this suit, contrary to the form and effect of the said indenture, and of the aforesaid covenant of the said John and Thomas so by them made with the said F. in that behalf as aforesaid; and so the said F. saith, that the said J. and T. have not (although often requested so to do) kept with him the said F. the covenants of the said J. and T. so by them made with the said F. but they so to do have hitherto wholly refused, and still refuse so to do, to the damage of the said F. of two hundred pounds; and therefore he brings his suit, &c. Pledges, &c.

And for further plea in this behalf as to the supposed breach Plea, 1st, *non est* of covenant first above assigned, the said J. and T. by leave, *factum*; 2d, &c. *actio non*; because they say, that nothing of the said sum *riens in arrear*; of one hundred and eighty-nine pounds is in arrear from the *3d* plea, payment of the rent; 4th plea, set off; 5th plea, tender payment; 6th plea, to last breach, that premises are not out of repair.

said

said J. and T. to the said F. in manner and form as the said F. hath above thereof complained against them; and of this they put themselves upon the country; and the said F. doth the like, &c. And for further plea in this behalf as to the said supposed breach of covenant first above assigned, the said J. and T. by like leave, &c. *actio non*; because they say, that the said J. and T. before the commencement of this suit, to wit, on the third day of May, in the year of Our Lord 1793, at the parish aforesaid, in the county aforesaid, paid to the said F. the sum of one hundred and eighty-nine pounds, in full satisfaction and discharge of the said sum of one hundred and eighty-nine pounds in the said breach of covenant mentioned, and of all the damages by the said F. sustained by reason of the breaches of covenant of the said J. and T. as to the said sum of one hundred and eighty-nine pounds, and every part thereof, which said sum of one hundred and eighty-nine pounds the said F. then and there accepted and received of and from the said J. and T. in full satisfaction of the said sum of one hundred and eighty-nine pounds in the said breach of covenant mentioned, and of the damages by the said F. sustained by reason of the breaches of covenant of the said J. and T. as to the sum of one hundred and eighty-nine pounds; and this the said J. and T. are ready to verify, therefore they pray judgment if the said F. ought to have or maintain his aforesaid action thereof against them: And for further plea in this behalf, as to a large part of the said sum of one hundred and eighty-nine pounds in the said breach of covenant first above assigned mentioned, to wit, the sum of one hundred and two pounds six shillings and fourpence, the said J. and T. by like leave, &c. *actio non*; because they say, that the said F. before, and at the time of the commencement of this suit, at the parish aforesaid, in the county aforesaid, was indebted to the said J. and T. [set off for money paid, work and labour, and materials found, and an account stated]; and for further plea in this behalf, as to the residue of the said sum of one hundred and eighty-nine pounds in the said breach of covenant first above assigned mentioned, the said J. and T. by like leave, &c. (*actio non*); because they say, that they the said J. and T. before the commencement of this suit, to wit, on the said third day of May, in the year of Our Lord 1793, at the parish aforesaid, in the county aforesaid, paid to the said Francis the said sum of eighty-six pounds thirteen shillings and eightpence in full satisfaction and discharge of the said sum of money in the introductory part of this plea mentioned, and of all damages by the said F. sustained, by reason of the breaches of covenant of the said J. and T. as to the said sum of money and every part thereof, which said sum of eighty-six pounds thirteen shillings and eightpence the said F. then and there accepted and received of and from the said J. and T. in full satisfaction and discharge of the said sum of money in the introductory part of this plea mentioned, and of all damages by the said F. sustained by reason of the breaches of covenant of the said J. and T. as to the said sum of money, and every part thereof; and this they are ready to

to verify: wherefore they pray judgment if the said F. ought to have or maintain his aforesaid action thereof against them; and for further plea in this behalf, as to the said breach of covenant lastly above assigned, the said J. and T. by like leave, &c. (*actio non*); because they say, that the said demised premises were not, nor was any part thereof prostrate, ruinous, fallen down, choaked up, out of repair, or in decay, in manner and form as the said F. in the said supposed breach of covenant lastly above assigned alledged; and of this they put themselves upon the country, and the said F. doth the like.

JOHN BAYLEY.

And the said Francis, as to the said plea of the said John and Thomas by them thirdly above pleaded in bar, as to the said breach of covenant first above assigned, saith, that by reason of any thing in that plea above alledged, he ought not to be barred from having and maintaining his said action thereof against them, because protesting that the said J. and T. did not pay to the said F. the said sum of one hundred and eighty-nine pounds in full satisfaction and discharge of the said sum of one hundred and eighty-nine pounds in the said breach of covenant mentioned, and of all damages by the said F. sustained by reason of the breaches of covenant of the said J. and T. as to the said sum of one hundred and eighty-nine pounds as in that plea is above supposed; nevertheless for replication in this behalf the said F. saith, that he did not accept and receive the said sum of one hundred and eighty-nine pounds in full satisfaction and discharge of the said sum of one hundred and eighty-nine pounds in the said breach of covenant mentioned, and of the damages sustained by the said F. by reason of the breach of covenant of the said J. and T. as to the said sum of one hundred and eighty-nine pounds; and this the said F. prays may be enquired of by the country, and the said J. and T. do the like: and the said F. as to the said plea of the said J. and T. by them fourthly above pleaded in bar, as to the said part of the said one hundred and eighty-nine pounds in the said breach of covenant first above assigned, says, that notwithstanding any thing by the said J. and T. in that plea above alledged, he ought not to be barred from having and maintaining his aforesaid action against him, because protesting that that plea in manner and form aforesaid above pleaded, and the matters therein contained are not sufficient in law to bar the said F. from having and maintaining his said action against the said J. and T.; nevertheless for replication thereto the said F. saith, that the said F. was not nor is indebted to the said J. and T. in manner and form as said J. and T. have in and by their said last mentioned plea above alledged; and this the said F. prays may be enquired of by the country, and the said J. and T. doth the like: and the said F. as to the said plea of the said J. and T. by them fifthly above pleaded in bar, as to the residue of the said sum of one hundred and eighty-nine pounds in the said breach of covenant first above assigned, saith, that

Replication to 3d plea, protesting the defendant did not pay plaintiff the money, for replication says, that he did not accept it in satisfaction.

REPLICATION.

that the said F. ought not, by reason of any thing in that plea above alledged, to be barred from having and maintaining his said action thereof against him, because protesting that the said J. and T. did not pay to the said Francis the said sum of eighty-six pounds thirteen shillings and eightpence in full satisfaction and discharge of the said sum of money in the introductory part of that plea mentioned, and of all damages by the said F. sustained by reason of the breaches of covenant of the said J. and T. as to the said sum of money, and every part thereof, as in that plea above supposed; nevertheless for replication in this behalf the said F. saith, that he did not accept and receive of and from the said John and Thomas the said sum of eighty-six pounds thirteen shillings and eightpence in full satisfaction and discharge of the said sum of money in the introductory part of that plea mentioned, and of the damages sustained by the said F. by reason of the breaches of covenant of the said John and Thomas as to the said sum of money; and this the said F. prays may be enquired of by the country, and the said John and Thomas do the like; therefore, &c.

THO. BARROW.



END OF THE THIRD VOLUME.

